

# Corporate Policy



Policy No.	A09-DEV
Page	Page 1 of 11
Effective Date	December 12, 2023
Council Approval	Yes
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Supersedes	

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**TAB:** Council

**SECTION:** Development Services

**SUBJECT:** License of Occupation

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## 1. POLICY STATEMENT:

1.1 The Town will conduct Land transactions in an open and transparent manner in accordance with this Policy and its natural person powers as contained in the *Municipal Act, 2001*.

## 2. PURPOSE

2.1 To provide a procedure for authorizing property owners to construct and/or maintain encroachments on Town Lands where it has been demonstrated that it is not practical or possible to relocate such encroachments. Authorizations shall take the form of a Licence of Occupation Agreement for encroachments or an Access Licence Agreement for modifying the surface of an existing Unopened Road Allowance to facilitate access to an abutting property.

## 3. APPLICATION

3.1 This Policy applies to the following types of Land transactions or Land related matters:

3.1.1 Licence of Occupation Agreements

3.1.2 Access Licence Agreements

3.2 This Policy applies to all Town employees, elected officials, and any agents or assigns authorized to acquire or dispose of Land on behalf of the Town.

3.3 Specific procedures and application forms for Land transactions identified above may be set out, maintained and updated administratively by Staff, as required.

3.4 This Policy shall not apply to any commercial or residential lease agreements executed by the Town.

3.5 All fees associated with the implementation and application of this Policy shall be in accordance with the Town's Fees and Charges By-law in force and effect.

## 4. ADMINISTRATION AND ENFORCEMENT

4.1 This Policy as it relates to Licence of Occupation Agreements shall be administered and enforced by the Director of Development Services (or designate).

- 4.2 This Policy as it relates to Access Licence Agreements shall be administered and enforced by the Director of Infrastructure Services (or designate).
- 4.3 The Policy will be amended by the appropriate Director(s) as required pursuant to legislative requirements. The Director(s) shall be authorized to amend this Policy to make any minor technical amendments or other amendments deemed necessary for administrative purposes to ensure this Policy is consistent with the Town's current operational practices.

## **5. POLICY**

### **5.1 Definitions**

For the purposes of this Policy, the following terms have the meanings ascribed to them:

- 5.1.1 "Access Licence Agreement" means an authorization issued under this Policy which permits an abutting landowner to make modifications and/or improvements to certain Town Lands to facilitate access to their abutting property;
- 5.1.2 "Benefitting Land" means the property owned by the Licensee which will benefit from a permission granted hereunder;
- 5.1.3 "Encroachment" means dock, deck, dwelling, garage or driveway or other structure or appurtenance which exists wholly upon, or extends from another property onto an abutting road, Unopened Road Allowance, original shore road allowance or other Town Lands;
- 5.1.4 "Licence Agreement" shall refer collectively to both an Access Licence Agreement and/or a Licence of Occupation Agreement;
- 5.1.5 "Licence of Occupation Agreement" means an authorization issued under this Policy which permits an abutting landowner to construct or maintain Encroachments on certain Town Lands;
- 5.1.6 "Licensed Lands" means the specific Town Lands or part thereof that are proposed to be or are the subject of a Licence Agreement;
- 5.1.7 "Licensee" means a Benefitting Land Owner who is proposed to or has entered in a Licence Agreement under this Policy;
- 5.1.8 "Renewal Application" means an application submitted for an existing Licence Agreement which has reached the end of its Term;
- 5.1.9 "Town Lands" includes a portion of abutting road, Unopened Road Allowances, original shore road allowances, and such other property owned or under the jurisdiction of the Town.
- 5.1.10 "Unopened Road Allowances" shall have the meaning given to it in section 5.5.2 of this Policy.

### **5.2 Prohibition**

5.2.1 No person shall be permitted to alter or modify, or undertake any maintenance activities, or store or place materials, or erect buildings or structures or permit Encroachments on Town Lands except with the express, written consent of the Town, which written consent shall take the form of either a Licence of Occupation Agreement or an Access Licence Agreement.

### **5.3 Licence of Occupation Agreements**

5.3.1 Occasionally, owners of properties discover that a portion of their dock, deck, dwelling, garage or other structure or appurtenance encroaches on Town Lands. In other cases, an owner may wish to seek Town permission to use or build one or more of the above noted structures on a portion of abutting Town Lands.

5.3.2 As set out above, is the policy of the Town not to allow Encroachments onto Town Lands. Rather, it is the preference of Town Council that, wherever possible, owners of abutting properties apply to purchase the portion of the Town Lands affected prior to building upon it. This preference typically applies to Unopened Road Allowances and original shore road allowances but could potentially apply to any Town Lands.

5.3.3 Notwithstanding the policies set out in Sections 5.2.1 and 5.3.2, the Town may authorize the construction and/or maintenance of Encroachments upon/on Town Lands under a Licence of Occupation Agreement where it is deemed expedient and in the Town's interest to do so.

5.3.4 Licence of Occupation Agreements will only be entered into with a Licensee if the Town chooses not to sell the portion of the Town Lands because:

5.3.4.1 The Town Lands may be needed for current or future operational requirements of the Town;

5.3.4.2 The sale of the Town Lands would contravene policies of the District Municipality of Muskoka's Official Plan, the Town's Official Plan or another plan (ie. Parks, Recreation and Trails Master Plan) and/or By-law of the Town); and/or

5.3.4.3 The road allowance will be needed for a future road alignment, in the opinion of the Director of Infrastructure Services (or designate).

5.3.5 The issuance of a Licence of Occupation Agreement may be considered for the following:

5.3.5.1 New and/or existing Encroachments on Town Lands that directly abut the Benefitting Land;

5.3.5.2 New and/or existing Encroachments on Town Lands that do not directly abut the Benefitting Land provided that the Town Lands to which the Licence of Occupation Agreement would apply shall generally be located between the straight-line projection of the side lot lines of the Benefitting Land across intervening public lands (which may include a public highway or Crown land) and onto the subject Town Lands. The Town shall retain discretion to authorize variances of the projection of the side lot lines as it deems

appropriate in the specific circumstances; and/or

5.3.5.3 The owner of the Benefitting Land has made an application to purchase the Original Shore Road Allowance however the Original Shore Road Allowance is zoned Environmental Protection in the Town's Comprehensive Zoning By-law and Council has not approved the sale of this land for environmental protection reasons.

5.3.6 No Licence of Occupation Agreement will be entered into by the Town:

5.3.6.1 If written plans or policies of the Town indicate that the portion of the Town Lands that is subject to the application will be used within 10 years for public road or recreation purposes;

5.3.6.2 If the use proposed by the Licensee on the portion of the Town Lands contravenes the Town's Comprehensive Zoning By-law;

5.3.6.3 If the requested Encroachment contravenes applicable law, regulations, policies or by-laws (e.g. Site Plan, Department of Fisheries and Oceans, Ministry of Natural Resources and Forestry);

5.3.6.4 If public safety is affected due to added pedestrian and vehicle traffic conditions;

5.3.6.5 If municipal interests are adversely affected;

5.3.6.6 If the Encroachment is a private septic system, sewage disposal system, or any part of such system;

5.3.6.7 If there is already a public access/beach/water access in close proximity which would serve the use; or

5.3.6.8 The Licensee or Benefitting Lands are currently in arrears with regards to amounts owing to the Town.

5.3.7 A Licence of Occupation Agreement shall be valid for a term of up to 10 years for a dock, deck, dwelling, garage or other permitted structures or appurtenances.

#### **5.4 Temporary Licence of Occupation Agreements**

5.4.1 Where the Benefitting Landowner has applied to purchase the abutting segment of original shore road allowance, and where the Town has proposed to close and sell the segment, the Director may issue a temporary Licence upon/with such conditions, terms and/or requirements as the Director in their sole discretion deems necessary. The temporary Licence shall expire upon the sale of the land to the Licensee.

#### **5.5 Access Licence Agreements**

- 5.5.1 There are a number of public highways within the Town which are not maintained by the Town, but which are nevertheless owned by or under the jurisdiction of the Town. In particular, these include unopened road allowances of various kinds and highways, streets and lanes shown on registered plans of subdivision, as well as highways laid out and built before January 1<sup>st</sup>, 2003 by persons other than the Town which have not been assumed for public use by the Town or established by by-law. Sections 31(4) and 31(5) of the *Municipal Act, 2001* provide that the Town has no liability for maintenance of any of these highways, unless and until it passes a by-law in that regard.
- 5.5.2 From time to time, persons having properties abutting such municipally-owned but unmaintained public highways, hereinafter referred to collectively as “Unopened Road Allowances”, request permission from the Town to do improvements on the surface of such Unopened Road Allowances to facilitate their own use of those Unopened Road Allowances. Despite the prohibition in Section 5.2.1, this policy establishes a framework for the consideration of these requests, based on the following principles:
- 5.5.2.1 The general public has a right of passage on Unopened Road Allowances, unless closed or the right of access is restricted by the Town.
  - 5.5.2.2 Access Licence Agreements will not be considered where legacy encroachments exist.
  - 5.5.2.3 Existing established utility corridors shall not be negatively impacted.
  - 5.5.2.4 A private landowner may not make improvements to an Unopened Road Allowance unless Town permission has been obtained through an Access Licence Agreement.
  - 5.5.2.5 Any permission granted for the use and/or improvement of an Unopened Road Allowance would be non-exclusive and therefore the Unopened Road Allowance will remain available for use by the public.
  - 5.5.2.6 By giving such permission, the Town shall not be assuming the responsibility for maintenance of the Unopened Road Allowance.
  - 5.5.2.7 No blasting activity is permitted within the boundaries of an Unopened Road Allowance.
  - 5.5.2.8 Bridge structures are not permitted within the boundaries an Unopened Road Allowance.
  - 5.5.2.9 Tree clearing may be permitted following the submission to the Town of an approved tree removal plan prepared by a Licensed Arborist or Landscape Architect.
  - 5.5.2.10 Drainage improvements may be considered following the submission to the Town of an engineered proposal prepared by a Licensed Professional Engineer.
  - 5.5.2.11 At the discretion of the Director or designate the posting of financial securities may be required.

- 5.5.2.12 The Access Licence Agreement shall not provide access/use for a distance greater than 300 metres from a municipally owned and year-round maintained road allowance that is used to access the lands subject to the Agreement.
- 5.5.3 Access Licence Agreements will only be entered into with a Licensee in cases where the Town chooses not to sell the portion of the Unopened Road Allowance to the Licensee because:
- 5.5.3.1 The Unopened Road Allowance may be needed for current or future operational requirements of the Town;
- 5.5.3.2 The sale of the Unopened Road Allowance would contravene policies of the District Municipality of Muskoka's Official Plan, the Town's Official Plan or another plan (ie. Parks, Recreation and Trails Master Plan) and/or By-law of the Town; and/or
- 5.5.3.3 The Unopened Road Allowance will be needed for a future road alignment, in the opinion of the Director of Infrastructure Services (or designate).
- 5.5.4 Access Licence Agreements may be entered into by the Town to authorize the use, alteration or improvement to/of an existing Unopened Road Allowance by an abutting land owner (a "Licensee") specifically for the purpose of access. Generally, an Access Licence Agreement would formalize the improvements permitted to an existing Unopened Road Allowance as travelled to enable improved access to a Licensee's property.
- 5.5.5 The Licensee will be required to install appropriate signage notifying the public that the Unopened Road Allowance is not maintained by the Town and any public use is at the public's own risk.
- 5.5.6 The Access Licence Agreement shall provide that no changes to the Unopened Road Allowance, other than those authorized by the Access Licence Agreement, will occur without the approval of the Director of Infrastructure Services and any other agency having jurisdiction. If permission for any changes is requested, the entering into of an amending Access Licence Agreement may be required at the sole discretion of the Director.
- 5.5.7 An Access Licence Agreement only provides the Licensee with permission to make improvements to an Unopened Road Allowance for access purposes and does not imply additional development rights on the Benefitting Lands being accessed by the Unopened Road Allowance.
- 5.5.8 The Town will not enter into an Access Licence Agreement for exclusive use of Unopened Road Allowances that lead to water, or any non-exclusive agreement that may interfere with or impede (directly or indirectly) public access to water.
- 5.5.9 An Access Licence Agreement shall be valid for a term of up to 10 years.

## 5.6 Licence Agreement Requirements

- 5.6.1 A Licence Agreement shall include provisions requiring, among other things, that:
- 5.6.1.1 The Licensee shall be required to pay a Licence Fee in accordance with the Town's current applicable Fees and Charges By-law;

- 5.6.1.2 Encroachments and/or improvements are to be removed and the Town Lands returned to their original state by the end of the Term of the Licence Agreement, failing which the Town shall be entitled to do so at the Licensee's sole cost and expense;
- 5.6.1.3 Any work conducted under the authority of the Licence Agreement must be approved by all applicable authorities and be in compliance with all applicable laws, regulations, by-laws and policies (e.g. Roadway Occupation Permit, Site Plan, Department of Fisheries and Oceans, Ministry of Natural Resources and Forestry. etc.);
- 5.6.1.4 All expenses of the Town shall be paid for by the Licensee;
- 5.6.1.5 The Licensee shall be required to provide confirmation of a policy of insurance covering the lands subject to the Licence Agreement, in a form satisfactory to the Town, which provides without limitation coverage, in the minimum amount of five million (\$5,000,000) dollars with the Corporation of the Town of Gravenhurst named as an additional insured,
- 5.6.1.6 The Licensee shall indemnify and save harmless the Town from any and all liability pertaining to the Licensed Area as a result of the permissions given in the Licence Agreement; and
- 5.6.1.7 Any unpaid costs incurred by the Town shall be deemed to be a debt of the Licensee and may be added to the tax roll of the Benefitting Land in accordance with the *Municipal Act, 2001*.
- 5.6.2 The Director is authorized to impose any additional conditions on Licence Agreements, based on comments received or as deemed necessary in their sole discretion.
- 5.6.3 Licence Agreements shall not be transferrable or assignable by the Licensee.
- 5.6.4 The Town shall be notified immediately of any change of ownership of the Benefitting Lands and Licence Agreements shall terminate upon change of ownership of the Benefitting Lands.
- 5.6.5 Upon a change of ownership, new owners of the Benefitting Lands shall be required to initiate a new application for a Licence Agreement to authorize any encroachments or improvements.
- 5.6.6 Although the Director has the authority to approve applications for Licence Agreements, they are not always required to exercise this authority and may on occasion refer controversial or complicated applications with a Staff Report to Council for its consideration.
- 5.6.7 Should the Director refuse, in writing, the issuance of a Licence Agreement to any abutting property owner who applies for same, the applicant may appeal to Council, by notice in writing to the Clerk within 30 days of the written refusal. Council shall consider the provisions of the Policy and hear the comments of the applicant and any other party who indicates in writing to the Clerk a desire to be heard at the meeting. Council will then decide whether to issue or refuse a Licence Agreement. Where Council decides to issue a Licence Agreement, it shall set out the conditions, if any.

## **5.7 End of Term**

- 5.7.1 A Licence Agreement issued under this Policy is at the Discretion of the Town and no permanent rights of any kind whatsoever shall be conferred by the Licence Agreement. Licence Agreements may be terminated by the Town at any point under the terms of the Licence Agreement.
- 5.7.2 Prior to the end of the Term of the Licence Agreement, a Licensee may make a Renewal Application under the terms and application form of that day or may make an application to purchase the relevant portion of Town Lands in accordance with any applicable property disposal policy/by-law then in force.
- 5.7.3 On or before the end of the Term, the encroachments or improvements on Town Lands shall be removed, all use under the Licence Agreement shall cease, and the Town Lands shall be returned to their natural state at the Licensee's expense.
- 5.7.4 Notwithstanding section 5.7.3, the term of a Licence Agreement may be extended, at the sole discretion of the Town, to permit the continued existence of the encroachment or improvement for such time as the Town, in its sole discretion, may determine.
- 5.7.5 When a Licence Agreement expires and it had been issued pursuant to a predecessor policy/by-law which has since been rescinded by Council, consideration of a Renewal Application and/or a new Licence Agreement shall be undertaken pursuant to the provisions of the herein policy or other policy in effect at the relevant time.

## **5.8 Process for New and Renewal of Licence Agreements**

- 5.8.1 To obtain authorization for a new/renewed Licence Agreement, the Licensee shall submit the following:
  - 5.8.1.1 A complete application form (Appendix I to this Policy);
  - 5.8.1.2 The Application Fee; in accordance with the Town's Fees and Changes By-law;
  - 5.8.1.3 A deposit for the Town's expenses in the amount determined by the Director at the time of the application;
  - 5.8.1.4 Current (less than six months old) seasonal (summer) pictures of the developed lands, or lands to be developed, neighbouring lands and the lands subject to the application, where applicable;
  - 5.8.1.5 Letter of Authorization, if the Licensee has authorized an agent to act on their behalf; and
  - 5.8.1.6 A detailed survey, sketch or site plan, "to scale", which clearly shows the following:
    - i) The location and measurements of all existing and/or proposed structures/encroachments on the Benefitting Lands;



- ii) The location and measurements of all existing and/or proposed structures/encroachments of the Town Lands;
- iii) The distance from the uses, structures/encroachments to the abutting lot lines and from the shoreline (where applicable);
- iv) Existing and proposed vegetation; and
- v) Driveways and paths.

- 5.8.2 The application fee submitted with an application is non-refundable regardless of the outcome of the application or regardless of withdrawal of the application by the Licensee. Further, in the event that the application is refused or withdrawn, the Town shall deduct and pay from any deposit any expenses it incurred and refund the balance of such deposit (if any) to the Licensee.
- 5.8.3 Further legal or other fees or disbursements may be required to cover the Town's expenses in relation to any research of the Benefitting or Town Lands, including legal description, title searches, etc., as well preparation of the Licence Agreement, and any such fees or disbursements incurred by the Town are the responsibility of the Licensee, and as noted above a deposit paid by the Licensee may be required at the time of the application.
- 5.8.4 Should the application be approved, within 30 days of being presented the final Licence Agreement, the Licensee shall submit to the Town:
- 5.8.4.1 Three copies of the Licence Agreement, duly signed;
  - 5.8.4.2 Proof of current liability insurance in the form of a Certificate of Insurance, in the amount of \$5,000,000 (five million) naming the Town of Gravenhurst as an additional insured to the satisfaction of the Town (if applicable); and
  - 5.8.4.3 The Licence Fee, as per the Town's current User Fees and Service Charges By-law.
- 5.8.5 One original copy of the Licence Agreement will be returned to the Licensee upon execution by the Director or designate.
- 5.8.6 Finance Department staff will be responsible for all financial transactions and the tracking thereof related to approved Licence Agreements, including providing MPAC a copy of the agreement to attach to the property roll.
- 5.8.7 Should a Licensee refuse to sign a Licence Agreement after an encroachment has been erected or improvements are made to an Unopened Road Allowance, Staff shall issue a letter requesting removal of structures and/or improvements from any Town Lands and, if required, the Town may pursue legal action.
- 5.8.8 In the event that the Licensee does not provide any other fee or reimbursement of expense associated with the Licence that may be incurred by the Town within three months of the invoice date, any outstanding fees may be added to the tax roll and collected in the same manner as taxes pursuant to Section 398 and/or Section 446 (as applicable) of the *Municipal Act, 2001*.

## 5.9 General

- 5.9.1 The Licensee shall also be responsible for payment of all costs associated with legal or other consultants or technical personnel retained by the Town, if required, including any survey costs incurred in connection with the review and processing of the Licence Agreement application.
- 5.9.2 Unless this requirement is waived in the sole discretion of the Director, the Licensee will be required to obtain, at their cost, a survey or reference plan to describe the limits of the applicable portion of the Unopened Road Allowance which they would be permitted to improve or maintain. The survey/reference plan ensures that the permitted area for improvements is clearly set out and that the Licensee does not trespass onto adjacent properties or Town Lands not covered by the Access Licence Agreement.
- 5.9.3 The Planning/Infrastructure Divisions shall ensure that the property and other details pertaining to the new or reissued Licence Agreements are entered into the Town's database so that it can be included into a layer in the Town's Geographic Information System.
- 5.9.4 All applications for Licence Agreements, whether existing or proposed, shall be reviewed on a case-by-case basis. No decision on one case shall be deemed to bind the Town on another case.
- 5.9.5 This policy shall be reviewed at least every 10 years to ensure compliance with current law, regulations and policies.

## REFERENCE

By-law Number:	Approved by Resolution No. #F on December 19, 2023
Replacing/Amending:	97-23, 2000-84
Originating Department:	Development Services/Infrastructure Services
Contact:	Director of Development Services or Development of Infrastructure Services
Departmental Procedures Manual:	Yes
Affected Departments:	All
Review Date:	December 2023