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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

October 31, 2014

Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

Re: Erie County Encroachment Policy for County Owned Lands

Dear Honorable Members:

After conducting a review of Erie County lands, the Erie County Lands Advisory Review Committee is requesting Legislature approval of the attached Encroachment Policy to address encroachment onto County owned lands.

Should your Honorable Body require further information, I encourage you to contact Commissioner of Environment and Planning Maria Whyte or Director of Real Property Tax Services Joseph Maciejewski. Thank you for your consideration on this matter.

Sincerely

A handwritten signature in blue ink that reads "Mark Poloncarz".

Mark C. Poloncarz, Esq.
Erie County Executive

MCP
Enclosure

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Departments of Environment and Planning and Real Property Tax Services
Re: Erie County Encroachment Policy for County Owned Lands
Date: October 31, 2014

SUMMARY

After conducting a review of Erie County lands, the Erie County Lands Advisory Review Committee ("ARC") is requesting Legislature approval of the attached Encroachment Policy to address encroachment by other entities onto County owned lands.

FISCAL IMPLICATIONS

None. In the event that property owners found to be encroaching on County owned lands wish to purchase such land and the County desires to sell, there will be revenue inuring to the benefit of the County.

REASONS FOR RECOMMENDATION/ BACKGROUND INFORMATION

After conducting a review, the County has determined that there are instances in which property owners or other persons or entities are encroaching on County-owned lands. These include instances in which there is suspected placement of building structures, sheds, pools, etc., on County-owned land, as well as suspected unlawful or improper use of County land (i.e. an entity is farming a County parcel without authorization).

In part, in order to address these encroachments and land issues, ARC has developed and approved the attached Encroachment Policy. Because there exists the potential for the County to sell certain parcels to encroaching property owners/entities or others, legislative authorization is requested for the Encroachment Policy.

Furthermore, there are likely to be instances in which the County desires to transfer ownership of certain "land-locked" or extraneous parcels which are of no value to the County but for which another level of government or a private entity/person wishes to purchase or acquire the land.

In the event the ARC approves of the sale/transfer of County land, in all instances the Legislature must ratify and approve of said sales.

CONSEQUENCES OF NEGATIVE ACTION

Encroachment could continue, thus presenting liability and legal issues for the County. In addition, potential revenue-generation opportunities would be forfeit.

STEPS FOLLOWING APPROVAL

The Departments of Environment and Planning, Law and Real Property Services will implement the Policy and begin to address encroachment issues, including examining opportunities for selling or transferring unneeded County lands to interested parties.

ERIE COUNTY
ENCROACHMENT POLICY AND PROCEDURES
For all County-Owned Lands

Adopted by the Erie County Lands Advisory Review Committee on October 30, 2014

PURPOSE:

All Erie County-owned land including park land, forest land, and Erie County Division of Sewerage Management and Erie County Department of Public Works lands and facilities are administered by the appropriate County department charged with the responsibility of maintaining and managing such lands. In cases when a specific department does not control a parcel, the Department of Real Property Tax Services holds ultimate authority for coordinating the maintenance and status of that parcel.

Erie County park lands are dedicated in perpetuity for public parks and recreation and/or natural resources conservation and historic preservation purposes. All real property owned by Erie County, including park land, shall be free from any unauthorized use or intrusion by any public or private agency(s) or person(s). Any unauthorized use or intrusion is unlawful and shall be deemed an encroachment.

Under the Erie County Charter, Article 8, Section 802, the County Commissioner of Parks, Recreation and Forestry “shall have supervision and control over the design, construction, operation, maintenance and repair of all County owned and operated properties and facilities for the following purposes; parks and recreation facilities therein, beaches, forest lands and golf courses, together with buildings, structures, roads, parking areas, utilities, equipment and appurtenances. The commissioner shall perform such additional and related duties as the county executive may prescribe.”

The following procedures to address the resolution of encroachments have been recommended for adoption by the Departments of Real Property Tax Services, Department of Law, Department of Public Works, Department of Parks, Recreation and Forestry, Department of Environment and Planning, and the Division of Budget and Management. This working group recommends that the below encroachment policy be made the official policy of Erie County. The County Executive may delegate to the appropriate department head the authority and responsibility for administering the procedures as set forth in this policy.

Under New York County Law §215, ultimate responsibility for the disposal of Erie County property rests with the legislative branch and any action to sell, transfer, etc. any Erie County land must be approved by the Erie County Legislature.

RATIONALE:

The County has become aware that some County-owned parcels of land have been encroached upon by one or more adjoining property owners. For instance, in one case, County-owned land adjacent to County forestry land is being farmed without a lease or any indemnification in place. In several other cases, it appears that private property owners have installed and maintain swimming pools partially on County lands adjacent to their private property.

The County desires to address and end such *unlawful* encroachment.

ENCROACHMENTS:

A. Suspected Encroachment

In those cases in which the County suspects there to be an encroachment upon County land, the appropriate department head or designee shall conduct an onsite inspection and complete an Encroachment Inspection Form, attached hereto and incorporated herein as Attachment "A."

Optimally, inspections shall take place between November 1 and March 31 when ground cover is at a minimum. The department head shall retain the original Encroachment Inspection Form, and send one copy to both the Departments of Law and Real Property Tax Services within five (5) days after the inspection.

The identification and removal of encroachments is an on-going process and is the responsibility, once an encroachment is suspected, of the respective department head. Encroachment records and files shall be maintained by the Departments of Law and Real Property Tax Services.

1. The appropriate department head or designee shall notify the Departments of Law and Real Property Tax Services of the suspected encroachment.
2. The department shall notify the Erie County Department of Environment and Planning, Geographic Information Systems ("GIS") division and provide the Section, Block and Lot (SBL) number. The GIS division will then provide an aerial photograph with the tax map layer turned on to help validate initial findings of an encroachment.
3. Upon investigation by the Department of Real Property Tax Services, solely or in conjunction with other County departments or offices, the property matter may be referred to the Erie County Land Advisory Review Committee ("ARC") for review and action.

B. Verified Encroachment

When the GIS data indicates an encroachment exists, the Department of Real Property Tax Services will coordinate with the department and the Department of Law to contact the responsible party engaged in the encroachment.

1. *First Formal Notification*

- a. The County will conduct an in-person contact with the encroaching property owner utilizing appropriate County personnel (including, if necessary, Real Property and Law).
- b. If in-person contact is not possible, the County will send a letter via certified mail to the suspected encroacher/property owner. Attached hereto and incorporated herein as Attachment "B" is a sample letter.

2. *Meeting with Encroacher/Property Owner*

Once contact has been made, an on-site meeting with the encroacher/property owner and County staff shall be arranged to review the encroachment and survey.

3. *Presentation of Contradictory Information by Encroacher/Property Owner*

If the encroacher/property owner disputes the County's claim of encroachment, the following steps shall be followed:

- a. Property owner's survey disputing claim of encroachment shall be given to the appropriate County department head who shall immediately notify the Departments of Law and Real Property.
- b. The Department of Law will review all information.
- c. If needed, a surveyor may be retained by the County and final determination and certification shall be made and the property owner shall be notified of outcome by the Department of Law by certified mail.

4. *Time frame*

A time frame for removal, based on the type of encroachment, shall be established by the appropriate department head or his designee after consultation with the property owner and the Departments of Law and Real Property.

NOTE: There may be instances where an exception is granted if an encroachment serves a County purpose and the County agrees to allow the encroachment to remain. In those instances, a revocable permit or easement shall be executed by the County.

5. *Certified Letter (agreement acknowledgment)*

A certified letter detailing agreement shall be sent to the property owner by the Department of Law. Attached hereto and incorporated herein as Attachment "C" is a sample letter.

6. *Initial Inspection for Compliance*

When the time frame for removal has expired, County staff shall inspect property and note the inspection results on the Encroachment Inspection Form.

7. *Second Formal Notification*

A letter shall be sent via certified mail to the property owner by the Department of Law stating non-compliance with allotted time for removal. Attached hereto and incorporated herein as Attachment "D" is a sample letter.

8. *Certified Letter (agreement acknowledgment)*

Once the encroacher/property owner and County have reached an agreement on how to remove the encroachment, a certified letter detailing said agreement shall be sent to the property owner by the Department of Law. Attached hereto and incorporated herein as Attachment "E" is a sample letter.

9. *Second Inspection for Compliance*

County staff shall inspect the property and note the results of that inspection on the Encroachment Inspection Form.

C. Notification of Non-Compliance

If, after two formal notifications and site inspections, the encroachment still remains, the encroacher/property owner shall be deemed to be in non-compliance and new measures shall be taken.

1. *Final Formal Notification*

A certified letter will be sent by the Department of Law with a copy to the department and Real Property. The letter shall establish a time limit for removal and clearly state that legal action by the County will follow if the encroachment is not removed forthwith. Attached hereto and incorporated herein as Attachment "F" is a sample letter.

2. *Final Inspection for Compliance*

After the letter is sent and a final time limit has passed, the County shall conduct a final inspection of the parcel to determine compliance (or lack thereof). If the encroacher/property owner has not complied, legal action will commence.

D. Legal Action

The Department of Law will commence the appropriate legal action against the encroacher/property owner.

E. Removal and Thank You Notice

If, at any time, encroachment is removed, a formal acknowledgment and thank you letter shall be sent by the department head. Attached hereto and incorporated herein as Attachment "G" is a sample letter.

F. Encroacher/Property Owner Interest in Acquiring County Land or the County Allows an Easement/Encroachment under Agreement

There may be instances in which the County wishes to sell the County-owned parcel to an adjacent property owner or the encroacher. The County acknowledges that whenever possible and appropriate, the County policy shall be to sell the land to the encroacher for a fair or reasonable price and to mutually resolve the encroachment to the benefit of both parties.

There may also be encroachments that should and will be allowed via a revocable permit or easement if said encroachment serves a County purpose and the County agrees. For instance, an area could be allowed to be farmed on an interim basis, or a land owner may be willing to maintain a County-owned parcel adjacent to his property, thus relieving the County of that burden. In such instances, the County must be indemnified and held harmless.

Finally, there may be circumstances, such as those occasionally encountered by the Division of Sewerage Management, in which the neighboring landowner wishes to purchase County land, but the County needs to maintain access to the land. In those instances, the County may endeavor to develop a mutually-satisfactory solution that entails an agreement whereby the County allows the nearby landowner the use of the property as long as no permanent structures are placed. In return, the landowner agrees to indemnify the County and the County retains the right to terminate the agreement.

**A RESOLUTION SUBMITTED BY
DEPARTMENTS OF ENVIRONMENT AND PLANNING AND
REAL PROPERTY TAX SERVICES**

RE: Erie County Encroachment Policy for County Owned Lands

WHEREAS, a review of County lands was conducted in summer 2014 by the Departments of Real Property Tax Services, Environment and Planning, Public Works, Parks, Recreation and Forestry, Division of Sewerage Management, and the Division of Budget and Management; and

WHEREAS, that review found instances in which persons or entities were encroaching on County owned lands and parcels; and

WHEREAS, the County determined that a policy was needed to address encroachment, and as a result, an Erie County Encroachment Policy was developed and approved by the Erie County Lands Advisory Review Committee on October 30, 2014; and

WHEREAS, the Erie County Lands Advisory Review Committee seeks legislative affirmation of the Encroachment Policy by the Erie County Legislature.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby approves of the enclosed Erie County Encroachment Policy dated October 30, 2014; and be it further

RESOLVED, that certified copies of this resolution will be forwarded to the County Executive, the Departments of Law, Real Property Tax Services, Environment and Planning, Parks, Public Works, Division of Sewerage Management, and the Division of Budget and Management.