

# **ERIE COUNTY ENCROACHMENT POLICY AND PROCEDURES**

For all County-Owned Lands

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

Approved by the Erie County Legislature on November 13, 2014 (Comm. 21E-25)

## **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.

ATTACHMENT "A"

**ERIE COUNTY  
ENCROACHMENT INSPECTION FORM**

1. County Land/Parcel Name: \_\_\_\_\_  
SBL #: \_\_\_\_\_
2. Municipality: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_
3. Name(s) of Inspector(s): \_\_\_\_\_ Title: \_\_\_\_\_
4. Were boundaries walked? Yes: \_\_\_\_\_ No: \_\_\_\_\_
5. Was survey used during inspection? Yes: \_\_\_\_\_ No: \_\_\_\_\_  
If "No," reason why not: \_\_\_\_\_
6. Were survey monuments found? Yes: \_\_\_\_\_ No: \_\_\_\_\_
7. Note location(s) of encroachment(s) on survey.
8. Types of encroachment(s) found:  
*Light* (fencing, planting, and storage of material): \_\_\_\_\_  
*Moderate* (parking area, shed, pool, yard use): \_\_\_\_\_  
*Severe* (building, paved walkways, driveways): \_\_\_\_\_
10. Name, address, and phone number of encroacher: \_\_\_\_\_  
\_\_\_\_\_
11. Date of discussion with encroacher about removing the encroachment, or date of initial contact letter (Attachment "B"): \_\_\_\_\_
12. Encroachment(s) will be removed by: \_\_\_\_\_
13. Date of follow-up inspection: \_\_\_\_\_
14. Encroachment(s) removed? Yes: \_\_\_\_\_ No: \_\_\_\_\_  
If "yes", date that "Thank You" letter sent to encroacher: \_\_\_\_\_  
If "No," contact Director of Real Property Tax Services for further action.

\_\_\_\_\_  
Inspector's Signature

\_\_\_\_\_  
Date

ATTACHMENT "B"

Date \_\_\_\_\_

ENCROACHER NAME  
ADDRESS  
CITY STATE ZIP

**Re: (SBL Number/Address) – Encroachment on Erie County Land – Via  
Certified Mail**

Dear (Encroacher's Name):

As you may be aware, the County of Erie owns SBL number \_\_\_\_\_ next to your property. Our recent site inspection of this area revealed that a (Type of Encroachment) is within our land. I would like to discuss this matter with you and meet with you to review our findings.

I would appreciate you contacting my office within seven (7) days of receipt of this letter, so we may schedule a meeting to discuss this matter further, and answer any questions that you may have.

Please contact me at (716) 858-\_\_\_\_\_. Thank you for your anticipated cooperation in this matter and I look forward to meeting with you.

Sincerely,

NAME  
TITLE

cc: Erie County Department of Law  
Erie County Department of Real Property Tax Services

ATTACHMENT "C"

Date \_\_\_\_\_

ENCROACHER NAME  
ADDRESS  
CITY STATE ZIP

**Re: (SBL Number/Address) – Encroachment on Erie County Land – Via  
Certified Mail**

Dear (Encroacher's Name):

As per our conversation on (Date of Agreement), this letter serves to acknowledge that you have agreed to remove (Type of Encroachment) on or before (Agreed upon Date).

If you have any questions or concerns, please contact me at (716) 858-\_\_\_\_\_. Thank you for your anticipated cooperation in this matter.

Sincerely,

NAME  
TITLE

cc: Erie County Department of Law  
Erie County Department of Real Property Tax Services

ATTACHMENT "D"

Date \_\_\_\_\_

ENCROACHER NAME  
ADDRESS  
CITY STATE ZIP

**Re: (SBL Number/Address) – Encroachment on Erie County Land – Via  
Certified Mail**

Dear (Encroacher's Name):

As you are aware, through my letter dated (See Letter "C"), your (Type of Encroachment) was to be removed on or before (Date). A site inspection on (Date) revealed your encroachment remains on County property.

Please contact me at (716) 858-\_\_\_\_\_ immediately in order that we can establish a date for removal of the encroachment.

Thank you for your anticipated cooperation in this matter.

Sincerely,

NAME  
TITLE

cc: Erie County Department of Law  
Erie County Department of Real Property Tax Services

ATTACHMENT "E"

Date \_\_\_\_\_

ENCROACHER NAME  
ADDRESS  
CITY STATE ZIP

**Re: (SBL Number/Address) – Encroachment on Erie County Land – Via  
Certified Mail**

Dear (Encroacher's Name):

As per our discussion on (Date of Agreement), this is to acknowledge that you have agreed to remove (Type of Encroachment) on or before (Agreed upon date).

Please contact me at (716) 858-\_\_\_\_\_ if you have any questions. Thank you for your anticipated cooperation in this matter.

Sincerely,

NAME  
TITLE

cc: Erie County Department of Law  
Erie County Department of Real Property Tax Services

ATTACHMENT "F"

Date \_\_\_\_\_

ENCROACHER NAME  
ADDRESS  
CITY STATE ZIP

**Re: (SBL Number/Address) – Encroachment on Erie County Land – Via  
Certified Mail**

Dear (Encroacher's Name):

In letters dated \_\_\_\_\_, you have been formally put on notice by the County regarding your encroachment on County property.

To date, you have failed to respond or address the encroachment. Accordingly, you are hereby notified that the (Type of Encroachment) must be removed from County property no later than (Date)\_\_\_\_\_. If you do not remove the encroachment by that date, the County will initiate appropriate legal action against you.

I anticipate your cooperation in this matter and look forward to hearing from you.

Sincerely,

Michael A. Siragusa, Esq.  
Erie County Attorney

cc: Erie County Department of Real Property Tax Services

ATTACHMENT "G"

Date \_\_\_\_\_

ENCROACHER NAME  
ADDRESS  
CITY STATE ZIP

**Re: (SBL Number/Address) – Encroachment on Erie County Land – Via  
Certified Mail**

Dear (Encroacher's Name):

A recent inspection on (Date) of (SBL number or property location)  
\_\_\_\_\_ confirmed that you have removed your (Type of Encroachment) on  
County land. Thank you for taking this action.

If you have any questions, please do not hesitate to contact me. Thank you for your  
cooperation in this matter.

Sincerely,

NAME  
TITLE

cc: Erie County Department of Law  
Erie County Department of Real Property Tax Services

## Example of Encroachments

