



# ROCHESTER PARK AND RECREATION DEPARTMENT

## POLICY ON ENCROACHMENT ON PARK LAND

### **PURPOSE**

To establish a policy and accompanying procedures to regulate encroachment into park lands and/or public lands under the stewardship of the Rochester Park Department.

### **HISTORY**

Encroachment has occurred along waterways, right-of-ways, trail corridors, forested park areas and general park lands. The encroachments have included vegetable gardens, flower plots, wood and construction storage, fences, dog kennels, RV-boat-trailer storage and utility sheds.

Encroachment activities generally fall into four categories:

1. Structures (e.g., fences, sheds, retaining walls, dog kennels, signs, etc.)
2. Landscaping (e.g., flower and vegetable gardens, tree planting, grade alterations, etc.)
3. Storage (e.g., firewood stacks, recreational equipment, yard furniture, etc.)
4. Disposal (e.g., dumping of grass clippings, leaves, and brush)

Several problems are associated with these seemingly harmless activities.

- They may inhibit access for Property or Facility maintenance
- Added landscaping or construction creates an unrealistic expectation of the City's restoration obligation if damaged during maintenance.
- Under storm event conditions, encroachments can obstruct the intended flow of surface storm water and cause localized flooding and flood damage.
- The use of the City property by private parties may restrict the intended use of the property on behalf of the general public.
- Use of public property provides specific benefits to individuals that are generally not available to other citizens.
- Unauthorized use of public property creates an unwarranted liability burden upon the City.

### **POLICY ISSUES**

The following items need to be considered as the Department formulates a policy and procedures for enforcement of the encroachment problem. Encroachment shall be defined as the unauthorized use of property owned by the City.

1. Does the City own the land in question and is the property under the general stewardship of the Park and Recreation Department?
2. Is the property line identifiable so that the person encroaching knows they are on public land?

3. Does the encroachment create a nuisance or potential hazard for the public and as such create a potential liability for the City of Rochester?
4. Is there a violation of City ordinance created by the encroachment?
5. Does the encroachment create a benefit exclusive to the adjoining property owner?
6. Has a previous permit been issued on the property to authorize an encroachment(s)?  
Is the permit valid and in compliance?

### **POLICY ADMINISTRATION**

1. The Superintendent of the Parks and Recreation Department or his designee shall act as the department's administrator of the policy.
2. Encroachment on park lands, regardless of the source of the report or observation, shall be reviewed and evaluated by the department.
3. Persons assumed to be responsible for the encroachment shall be notified of the encroachment and be required to immediately cease the activity and if applicable (a) restore the area to pre encroachment activity and either (b) remove the encroachment from public lands at their sole cost within 14 calendar days (weather and season permitting) or (c) submit an Encroachment Permit application within 7 days of notification of encroachment, seeking permission to encroach onto public lands. If the persons responsible for the encroachment do not submit a Permit application or restore the area/remove the encroachment within the specified time frame, the City will mitigate the encroachment and have the material removed and all associated costs (hourly wages, benefits, equipment, fuel, supplies, disposal, etc.) will be charged to the responsible party.
4. The permit applicant shall be notified of the application review as well as to any restrictions that may be placed on the encroachment request. In the event the Permit application is denied, the responsible party must mitigate the encroachments within 14 calendar days (weather and season permitting) at their sole cost.
5. The department shall keep a file of all approved and all denied application requests.
6. The encroachment permits shall be reviewed and inspected periodically by the department to ensure compliance with any restrictions that may have been placed on the issuance of the permit.
7. The encroachment permits shall be revocable by the department at any time.

### **ENCROACHMENTS GENERALLY PERMITTED:**

- 1) Planting of trees or shrubbery or flowers per approved planting permit issued by the Park and Forestry Division Head or its designee.
- 2) Limited Turf improvements and routine turf maintenance in areas with limited mowing/maintenance by the City will be permitted, including mowing beyond Owners property line generally a distance of 5-15 feet, is acceptable for the control of weeds and insects adjoining Owner's property.
  - a) Except: No mowing and no damage/destruction of native habitat in areas determined to be important as may be identified on the Olmsted County Biological Survey, in areas where the City has invested funding to maintain native areas through signage or other physical or financial investments, or in park locations which contain native vegetation and which large areas are intended to remain in a more natural condition (ie , Zumbro Park South, Essex Park, Quarry Hill, Indian Heights, Smetka Park and others as designated).

- b) Except: No mowing and no damage/destruction/change of vegetation shall be permitted in areas immediately adjoining creek/river banks, wetlands, or other areas that are apt to erode or which may degrade water quality.
  - c) Except: In areas of highly maintained areas and those with frequent mowing, Owners may be permitted to extend their mowing well into the parkland provided the maintenance is consistent with the mowing of the other areas of the parkland. These locations will generally be found adjoining neighborhood park areas.
- 3) Improvements, consisting of the placement vegetation, trees, or other sustainable infrastructure (ie. rain gardens to help control storm water runoff), utilizing best management practices for the enhancement of the localized park area.
  - 4) The removal of noxious or invasive species consistent with the policies and procedures of the Department.
  - 5) Temporary access to private property, on a very limited basis, may be provided via public lands pending approval of an application.

**ENCROACHMENTS GENERALLY DISAPPROVED:**

- 1) Grading or changing the elevation of the park property purely to meet the desires of the owner.
- 2) Storage of firewood
- 3) Placement of Yard furniture and equipment (e.g., picnic tables, patio sets, kiddie pools, horse shoe pits, etc.)
- 4) Construction of permanent structures such as retaining walls, fences, utility sheds, fire pits, playground equipment, dog or pet kennels, etc
- 5) Storage of trailers, vehicles, boats, RV's
- 6) Construction of tree houses
- 7) Disposal of garbage or yard/garden waste (including but not limited to brush piles, yard waste, compost piles/bins)
- 8) Storage of trash containers
- 9) Development of private vegetable gardens
- 10) Placement of any landscaping plantings or other improvements which create an illusion of the expansion of the abutting owner's yard
- 11) Removal or damage to vegetation that is contrary to the "Best Management" practices for the encroachment location which may include:
  - a) mowing and/or damage/destruction of native habitat in areas determined to be important as may be identified on the Olmsted County Biological Survey,
  - b) mowing and/or damage/destruction of native habitat in areas where the City has invested funding to maintain native areas through signage or other physical or financial investments, or in park locations which contain native vegetation and which large areas are intended to remain in a more natural condition (ie , Zumbro Park South, Essex Park, Quarry Hill, Indian Heights, Smetka Park and others as designated).
  - c) mowing and/or damage/destruction/change of vegetation in areas immediately adjoining creek/river banks, wetlands, or other areas that are apt to erode or which may degrade water quality