

BACKGROUND

In the Town of Wellesley (the “Town”), several bodies hold land under their jurisdiction, including the Natural Resources Commission, the Select Board, the Board of Public Works, the School Committee, the Board of Library Trustees, and the Municipal Light Board. In 2012, the Town adopted a *Policy for Encroachments on Town Land* (the “Original Policy”) to establish a consistent framework for addressing private encroachments on Town land. To ensure one unified Encroachment Policy governing all Town land, a working group comprised of representatives from all bodies with jurisdiction over Town land, together with the Trails Committee, studied the issues relating to encroachments. In doing so, the group relied heavily on the Natural Resources Commission’s 2006 *Encroachment Correction Policy*. The working group recommended that each body with land under its jurisdiction adopt the Original Policy along with a consistent process for correction of encroachments. This Amended and Restated Policy for Encroachments on Town Land (the “Policy”) supersedes and replaces the Original Policy in its entirety, reaffirming the Town’s commitment to protecting public land while introducing greater flexibility and adaptability in the correction process.

PURPOSE. To ensure one unified Encroachment Policy governing all Town land, along with a consistent process for correction of Encroachments.

APPLICABILITY

Encroachments may include, but are not limited to:

1. Construction or placement of structures above or below ground (e.g., fences, retaining walls, sheds, play equipment, patios, driveways, or additions);
2. Landscaping activities such as plantings, lawns, gardens, or irrigation systems extended into Town land;
3. Storage or placement of materials on Town land (e.g., firewood, compost, debris, vehicles, trailers, or equipment);
4. Dumping, filling, or removal of soil, vegetation, or other natural materials from Town land;
5. Clearing, cutting, or alteration of trees, shrubs, or other vegetation on Town land;
6. Activities that obscure or alter established property boundaries or signage on Town land; and
7. Any other action by a private individual or entity that physically encumbers Town land and diminishes public use, safety, enjoyment, or environmental value of Town land.

Encroachments may be temporary or permanent, minor or substantial. Their classification and correction will be based on the nature, extent, and impact of the Encroachment rather than a single rigid standard.

POLICY

It is the policy of the Town to protect and preserve Town land for the benefit of the community. Accordingly, as a general rule, the Town will seek to address and, where deemed appropriate, correct Encroachments on Town land. Responsibility for pursuing remedial action rests with the Board that has jurisdiction over the affected land. Encroaching parties are expected to restore the land to a condition that is appropriate and consistent with its intended public use. In most cases, the encroaching party will also be responsible for the costs associated with correction, which may include surveys, boundary marking, and the development and implementation of a restoration plan, subject to review and approval by the responsible Board. If cooperation cannot be achieved, the Board may take corrective action on its own initiative and may pursue further remedies as needed, including, where warranted, the imposition of a municipal lien with the approval of the Select Board.

Prioritization of Encroachment Responses:

Because Encroachments vary in their impact and the Town's resources are finite, the Town will prioritize corrective action based on the severity and nature of the Encroachment. While every Encroachment is of concern, not all require the same degree of response:

1. **Health and Safety Risks (Highest Priority):** Encroachments that create actual or potential safety, health, or hazardous conditions will be addressed promptly and given the highest level of attention.
2. **Significant Intrusions (Substantial Priority):** Encroachments that involve major intrusions onto Town land, such as construction of structures, large-scale landscaping, or substantial dumping, that interfere with public use, enjoyment, or recognition of Town boundaries will generally be prioritized for correction.
3. **Minor or Limited Impacts (Discretionary Priority):** Encroachments that are modest in scope and do not present health, safety, or significant use concerns may be monitored, addressed through outreach, or corrected as resources permit.

The Town reaffirms its commitment to protecting and preserving public land for current and future generations. This Policy provides a framework for addressing Encroachments and ensuring that Town land remains a shared resource for all residents.

PROCEDURE¹

¹ A Board should seek advice of Town Counsel before taking any steps in this Procedures section if it reasonably believes it is necessary or advisable to do so.

1. Document Alleged Encroachment in Central Log: Each Board should review the land under its jurisdiction from time to time to determine if any Encroachments on said land may exist. Each Board shall maintain a record (which may be in a Town Central Encroachment log) of each alleged Encroachment in a manner appropriate to the circumstances. The record should include the information reasonably necessary to understand and evaluate the Encroachment. Furthermore, each Board should review the record of Encroachments on the land under its jurisdiction from time to time to determine the status thereof.

2. Research: The relevant Board shall gather sufficient information to understand the nature and extent of the alleged Encroachment. This may include reviewing available mapping resources (e.g., Geographical Information System or “GIS”), property records, or surveys, and/or conducting a site visit with photographs or other documentation as appropriate considering the circumstances.

3. Classification of Level of Encroachment: The relevant Board shall classify the alleged Encroachment based on the priorities levels set forth in the Policy within a reasonable amount of time following notice of the alleged Encroachment (ideally, within 45 days).

4. Action Following Confirmation of an Encroachment: The following steps of the correction process should **only** be used if a Board confirms the Encroachment and determines that corrective actions may be taken at the relevant Board’s discretion. Encroachments that present health and/or safety risks must be pursued for correction.

a. Notice Letter: Send certified letter to the Property Owner signed by an authorized signatory of the enforcing Board, which letter should include the following:

- i.** Notice to the Property Owner of the Encroachment and a reasonable description thereof (including the location);
- ii.** Request that the Property Owner call the Board to schedule a site visit to develop a site plan to correct the Encroachment;
- iii.** Request that the Property Owner hire a MA Licensed Registered Land Surveyor or MA Professional Engineer to survey their property boundaries, if needed; and
- iv.** Advise the Property Owner that they will be required to pay all expenses related to correction of the Encroachment, including any costs incurred by the Town.

b. If a Wetland is Impacted: The Natural Resource Commission’s Wetlands Protection Committee (WPC) **must** be notified by the applicable Board so that the WPC can determine if the Encroachment impacts wetlands resource areas.

c. Department of Public Works (DPW) Assistance: If the Property Owner refuses to perform a survey (if requested), a Board may make a written request to the DPW/Engineering Department to perform a survey of the area in question, as needed. The DPW shall document all related costs to Town.

5. Site Visit to Determine Restoration Plan: The relevant Board shall identify the appropriate staff to conduct a site visit. The relevant Board may request that the Property Owner develop a restoration plan. If the Property Owner declines the request, the Board may develop its own restoration plan in respect of the Encroachment and all costs of doing so shall be reimbursed by the Property Owner.

6. Review of Restoration Plans: The relevant Board shall review the restoration plan developed in accordance with Section 5 of this policy.

a. The DPW must review and approve all restoration plans.

b. If the site includes wetlands, the WPC must review and approve restoration plans.

7. Determine Bounds Markers: Bound markers shall be placed in accordance with the restoration plan. These markers may include, but are not limited to:

a. Permanent (stone or concrete) bounds;

b. Installation of bounds at intervals along “shared” property line, at intervals as determined by the Board;

c. Depth of bounds’ installation: approximately 2 feet;

d. Bounds’ height: one foot (or more) above ground level or as appropriate for location as determined by the Board; and

e. Install permanent metal “mushroom” caps or other notation in bounds, as supplied by the Town.

8. Restoration Request: Following required approvals of the restoration plan, the relevant Board shall send a certified letter to the Property Owner requiring restoration/correction of the Encroachment as per the restoration plan. In the event the Property Owner refuses to correct the Encroachment, the Board shall advise the Property Owner that the Town will undertake the restoration and will require costs to be borne by the Property Owner and, if warranted, require the Property Owner to sign a consent agreement. In cases of financial

hardship or refusal to restore or pay expenses, the Town may proceed with restoration and place a municipal lien on the property for costs incurred. Municipal liens require the approval of the Select Board.

9. Approval Letter: The relevant Board shall issue its and/or Wetlands Protection Committee's formal approval of the restoration plan to the Property Owner.

10. Follow-Up Site Visit: The relevant Board shall (i) confirm that the Encroachment has been corrected in accordance with the restoration plan; and (ii) ensure that photographs are taken of the site.

11. Closing Out the File: The relevant Board shall conduct a site visit to close the matter in its records.

12. Implementation: Each Board adopting this Policy is responsible complying with its obligations hereunder.

DEFINITIONS

- 1. Encroachment:** Any unauthorized private use, occupation, alteration, or intrusion onto Town land that affects its condition, use, or appearance.
- 2. Board:** The term Board shall include boards, committees, commissions and similar bodies, as well as departments under their control.
- 3. Property Owner:** The individual(s) or entity identified on property card on file with the Board of Assessors, unless the Board has reason to deem otherwise.

REGULATORY/STATUTORY REFERENCES

ADOPTED BY

ORIGINAL POLICY

Ann M. Howley on behalf of the Board of Library Trustees	1.23.12
Barbara D. Searle on behalf of the Board of Selectmen	1.23.12
William Charlton on behalf of the Municipal Light Plant Board	1.26.12
Neal Seaborn on behalf of the Natural Resources Commission	1.2.12
William Charlton on behalf of the Board of Public Works	1.26.12
Suzanne S. Littlefield on behalf of the School Committee	2.1.12

REVISED POLICY

Marjorie R. Freiman on behalf of the Select Board	[09.XX.25]
---	------------

Natural Resources Commission
School Committee
Board of Library Trustees
Board of Public Works
Municipal Light Board

The above-named Boards reserve the right to amend this policy at will.