



# Administrative Manual of Operating Procedures

Procedure #: <b>13.01.02</b>	Procedure Title: <b>Parkland Encroachment</b>		Revision #: <b>2.0</b>
Original Issue Date: <b>12/10/2019</b>	Revised Issue Date: <b>06/03/2021</b>	Next Review Date: <b>06/03/2023</b>	Responsible Department: <b>Parks</b>
Statutory References: <b>None</b>		Ordinance References: <b>MCO §§ 39.01, 67.07, Sub-Chapter II, MCO Ch. 47</b>	
Appendices: <a href="#">Appendix B – 13.01.02 LMS Training PowerPoint</a> <a href="#">Appendix C – 13.01.02 Flowchart</a>		Forms: <a href="#">Form 13.01.02(a) – Parkland Encroachment Inspection Form (sample)</a> <a href="#">Form 13.01.02(b) – Parkland Encroachment Notice (sample)</a> <a href="#">Form 13.01.02(c) – Stop Order: Certified Cease and Desist Letter (sample)</a>	

## 1. OBJECTIVE

To establish a formal process through which Milwaukee County Parks (Parks) can regulate encroachment into parkland and enforce regulations pursuant to existing Milwaukee County Ordinances (MCO).

## 2. DEFINITIONS

- A. Abatement. The resolution to the encroachment to return the parkland to its desired state defined by the department.
- B. Department. “Department” refers to Milwaukee County Parks.
- C. Dumping. Placing, releasing, dropping or depositing yard waste, litter, trash, debris, infectious waste as defined under MCO § 39.01, obstructions; or permitting the migration, flowing or transfer by wind or gravity of material from an adjoining or nearby site onto park property, or the creation of hazards on park property without permission from the department. This term includes the unauthorized deposit on park property of any environmentally hazardous or polluting materials or substances, including but not limited to infectious waste. For purposes of these provisions, "dumping" is treated as a separate category from "unauthorized use" to clarify that it is subject to summary enforcement action.
- D. Encroachment. The unauthorized use of property owned by Milwaukee County Parks. For a comprehensive description of “unauthorized park uses” refer to MCO § 47.42. Additionally, MCO § 67.07 details encroachment activities as they pertain to obstructions on County property and special privileges associated with encroachments.
- E. Park or Park Property. All parks and bodies of water contained therein or adjacent thereto, squares, drives, parkways, boulevards, trails, golf courses, beaches, playgrounds, play fields, botanical gardens, greenbelts, natural areas, and all other buildings and facilities comprising the parks and recreation system of the County under the management and control of the Parks Department.
- F. Permit. A temporary written permission from Parks’ Executive Director or designee to use or occupy park property.
- G. Point of Contact. The Department employee that guides requests through the process, communicates with applicants, and ensure completeness of forms. The Point of Contact will be assigned by Parks’ Executive Director or designee.
- H. Project. Any new initiative, endeavor, partnership, infrastructure, or program that is requested of the department.

- I. Possessory Interest. The right and intent of someone to occupy or control a plot of land but does not include ownership of the land.
- J. Responsible Party. Any individual, business or legal entity that:
  - i. Owns or has a possessory interest in property benefited by or causing, or which is the source of, encroachment, an unauthorized use, or dumping;
  - ii. Owns or has a possessory interest in property from which encroachment or dumping occurred.
  - iii. Establishes, continues, or maintains an unauthorized use, encroachment, or dumping. In the case of dumping or any unauthorized use subject to a stop order, "responsible party" may include but is not limited to a contractor who causes, carries out or contributes to the dumping or the unauthorized use subject to a stop order, including the subcontractor or agent of, a party in privity with a responsible party or that party's contractor.
- K. Stop Order. An order requiring immediate cessation of any activity on park property that constitutes an unauthorized use. A Stop Order may require the party responsible to perform all cleanup or restoration necessary to abate the unauthorized use and include a \$500 per day fine. This may require the responsible party to perform all cleanup and restoration necessary to abate the encroachment or other unauthorized use and set a time frame for full compliance.
- L. Structure. Anything parked (including any vehicle placed on park property overnight without permission of Parks' Executive Director or designee), constructed or erected on or under the ground, or any improvement built up or composed of parts joined together in some definite manner and affixed to the ground, including fences, walls and signs, or attached to any type of vegetation.
- M. Unauthorized Use. A use that is not condoned by the Parks Department, not conducted in accordance with the terms of a Parks Department-issued permit, and not conducted pursuant to a legal right recognized by the Parks Department or established by court order; the term includes but are not limited to the intentional or negligent dumping or depositing on park property of environmentally hazardous or polluting material.

### 3. OVERVIEW

- A. Prohibited Park Uses

Milwaukee County Ordinance § 47.42(12) prohibits the following activities or uses in, upon, over or under Parks property without the prior written consent of Parks' Executive Director or designee:

  - i. Any driveway, parking pad or site, stairway, walkway, building, patio, deck, sign, or other structure; or
  - ii. Fencing, staging, scaffolding, or other material, machinery or tools used to be used in connection with the erection, alteration, demolition, repair or painting of any structure; or
  - iii. Landscaping, gardens and rockeries; or
  - iv. Drainage facilities, including but not limited to pipes, catch basins, sumps, swales, detention ponds and ancillary structures; or
  - v. Utility installations and ancillary structures; or
  - vi. Storing or placing any inanimate object, provided that "use" shall not include placing an inanimate object in such a location and for such a limited time that, under the circumstances, a reasonable person would consider the use to be a customary use; or
  - vii. Disturbing any Parks property by digging, cutting, excavating, temporarily storing any materials or vehicles, filling, chipping, puncturing or breaking; or

- viii. Planting, removing, injuring, destroying, cutting, topping or pruning any tree, shrub, herbaceous plant, or fungus on park property, provided that "use" does not include activities specifically allowed under the terms of a permit or program approved by Parks' Executive Director or designee; or
- ix. Constructing, reconstructing, repairing or removing any driveway, curb, curb setback, trail (soft or hard), sidewalk, or crosswalk, pavement, sewers, water mains, grading, lighting, utilities, or appurtenances thereto, except when permitted by ordinance, or doing any work in, or erecting any structure in, upon, over or under any park; or
- x. Vending of any kind, whether of a product or a service.

#### 4. PROCEDURE

##### A. Encroachment Procedure

###### i. Discovery:

- a. Parks staff will contact their supervisor if they believe an encroachment has occurred. The supervisor will contact either Parks' Director of Operations and Director of Administration & Planning who will then assign a Point of Contact for each occurrence of a suspected encroachment.
- b. If the public believes an encroachment has occurred, they can contact the Department via 414-257-7275.
- c. Staff will catalogue all known instances of encroachment on a tracking document listing the name of the Point of Contact, location of encroachment, and status of addressing the encroachment.
- d. Parks' Executive Director or designee will prioritize the order in which encroachments are to be addressed based on the Parkland Encroachment Form that indicates the level of encroachment severity.

###### ii. Verification:

- a. Staff will make all efforts to research, verify, and document the occurrence of an encroachment to include review of property title and survey documents, aerial photography, legislation and other files that may have offered prior approval of the encroachment, and site visits.

###### iii. Notification:

- a. Once an encroachment is verified, notice to the property owner will commence via in-person contact, telephone, certified mail or any other mode deemed appropriate and may include the following:
  - i. Description of the location and type of encroachment;
  - ii. Visual exhibits including, but not limited to, aerial photography, plats, or surveys that clearly depict the encroachment area;
  - iii. Reference to MCO and description of the enforcement process and means of addressing the encroachment.
- b. If deemed appropriate by Parks' Executive Director or designee, the Department may issue a Stop Order in addition to the notification. Stop Orders shall be issued pursuant to MCO § 47.50, in which Parks' Executive Director or designee may issue a Stop Order requiring immediate cessation of an ongoing encroachment and/or other unauthorized use of Parks property. Parks' Executive Director or designee shall designate staff to post the Stop Order at the site and, if possible, serve a copy of the Stop Order to the person(s) doing or responsible for the activity (MCO § 47.50(2)). The Stop Order shall state the

- activity to be stopped and the basis for doing so (MCO § 47.50(3)). Additionally, the Stop Order may require the responsible party to restore the affected site according to the parameters and timeframe set forth by the Parks Planning and Operations Divisions. Once Parks has posted the Stop Order, all encroachments and/or other specified unauthorized uses upon a site must cease immediately.
- c. If the responsible party fails to comply with a Stop Order immediately after receiving notice of the Stop Order, the party may be subject to a penalty of five hundred dollars (\$500) for every day the party fails to comply (MCO § 47.50(5)). The total penalties imposed may not be greater than five hundred dollars (\$500) per day (MCO § 47.50(5)).
  - d. The Department reserves the right to notify other affected parties regarding additional violations of federal, state or other municipal law or ordinance and may participate actively in additional jurisdictional investigations.
- iv. Appeal:
- a. If the property owner wishes to challenge the existence of an encroachment, they may hire a surveyor or other professional services at their cost to do so.
- v. Enforcement:
- a. The Point of Contact will have any and all means provided by MCO, including legal action, available to address the encroachment.
  - b. In considering the enforcement of MCO, the Point of Contact will also consider the severity of the encroachment and whether the property owner has repeated infractions of MCO.
  - c. Within the jurisdiction set forth in MCO § 47.46, the party responsible for an ongoing encroachment and/or other unauthorized park use may be held liable in a civil forfeiture proceeding in which the court may impose any one or more of the following remedies:
    - i. Impose upon each responsible party a civil penalty of up to five thousand dollars (\$5,000). Additionally, the court may impose upon each responsible party a penalty of up to five hundred dollars (\$500) for each day the encroachment or other unauthorized use continues beyond the thirty-day abatement period or beyond the date a stop order was issued; or
    - ii. Enjoin the unauthorized use and order each responsible party, at its expense, to restore the affected park property to its condition prior to the use; or
    - iii. In addition to the foregoing, Parks' Executive Director or designee may refer the matter to the Milwaukee County Office of Corporation Counsel, who may bring an action for compensatory or punitive damages, trespass, ejectment, eviction, declaratory or injunctive relief, or any other appropriate civil remedy; or
    - iv. Use any combination of the above remedies.
  - d. Pursuant to MCO § 47.47, if Parks cannot identify a party responsible for the unauthorized use despite using all reasonable means, as defined in MCO § 47.49(2), or if the Department determines that the unauthorized use creates substantial risk of injury to persons, to Parks' property, to utilities serving Parks' property and/or to park improvements, Parks' Executive Director or designee may, without notice or on less than thirty days' notice:
    - i. Impose a civil penalty of one hundred dollars (\$100) for each day the unauthorized use continues beyond the abatement period specified in a notice from the Department; or

- ii. If no notice is given, for each day the unauthorized use continues from the date that Parks documents in its records the unauthorized use; or
  - iii. Abate the unauthorized use and restore the affected park property; or
  - iv. Refer the matter to the District Attorney or Corporation Counsel, who may bring an action for compensatory and punitive damages, trespass, ejectment, declaratory or injunctive relief, and any other appropriate civil or criminal remedy; or
  - v. Use any combination of the above remedies.
- e. Should Parks' Executive Director or designee choose to abate the encroachment or other unauthorized use and restore the affected property, the responsibility for abatement costs will fall solely on the responsible party. Responsible parties are liable to Parks for all costs that the Department incurred in abating the encroachment or other unauthorized use and in restoring the affected Parks property pursuant to MCO § 47.49. Recoverable costs of abatement may include but are not limited to, staff time, cost of outside contractors, site restoration, dump fees, rental costs, machine or vehicle use, attorneys' fees, providing notices, and a fifteen percent surcharge for administrative expenses. Parks' Executive Director or designee is authorized to disseminate the rules specifying the costs of abatement.
- f. The procedures for the abatement of dumping on Parks' property differ from the aforementioned in relation to encroachment and other unauthorized uses. In accordance with MCO § 47.48, if a responsible party does not immediately abate dumping on Parks' property and then restore the affected property to its prior condition according to parameters set forth by the Parks Planning and Operations Divisions, Parks' Executive Director or designee may then:
- i. For each day that dumping remains unabated after Parks has ordered the dumping be abated, Parks' Executive Director or designee may impose a civil penalty of two hundred dollars (\$200) per day on the responsible party; or
  - ii. Abate the dumping and restore the affected property according to parameters set forth by the Parks Planning and Operations Divisions and, if Parks' Executive Director or designee chooses, pursue reimbursement for the recoverable abatement costs that Parks incurs; or
  - iii. Refer the case to the Milwaukee County District Attorney or Corporation Counsel who may then bring an action for other appropriate civil remedies such as compensatory or punitive damages, trespass, etc.; or
  - iv. Use any combination of the above remedies.
- g. Restoration of affected Parks property after encroachment or other unauthorized uses have been abated must be carefully planned out and executed according to parameters set forth by the Parks Planning and Operations Divisions. As decided by Parks' Executive Director or designee, responsible parties will be required to implement a site-specific and Parks approved Restoration Plan for the affected site, which will include a detailed timeline, methods, materials, and objectives to be met to complete the restoration. If the proposed Restoration Plan includes re-vegetating the affected property with herbaceous plants, trees, or shrubs the responsible party shall not deviate from the Parks approved plant species list without prior written permission from the Department. At the discretion of the Parks Planning and Operations Divisions, these plant lists may be altered to best meet both the ecological and aesthetic goals for the parkland. Restorations are site-specific; therefore, some sites may simply require that a responsible party cease the

unauthorized use of the property without any major restorations, while other sites may require extensive restoration activities. Restoration shall include successful establishment and maintenance expectations, as determined by designated Parks staff.

vi. Resolution:

- a. Resolution is complete when the Parks' Executive Director or designee has decided that the encroachment has been reasonably addressed through enforcement and/or abatement.

B. Department Permitted Uses (Right-of Entry Permits)

- i. This procedure does not prevent individuals or groups from performing community service activities. However, approval of service activities requires the written permission of Parks' Executive Director or designee. Parks recognizes there are occasions when outside entities and individuals need to obtain access to parkland to undertake maintenance activities as they relate to easements, adjacent property lines, construction activities for capital projects, ecological restoration, and research activities. Under these circumstances, the appropriate Parks Planning and Operations staff will review the access request and issue a Right-of Entry (ROE) permit for the approved activities.

**5. REVISION HISTORY:**

Rev. #	Summary of Changes	Date of Change	Author
2.0	Notification section updated to reflect how staff execute communication with encroachments	4/28/2021	Jeremy Lucas
1.0	New procedure	12/10/2019	Jen Francis