



Policy Number:	CO-054
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Responsibility:	Planning and Development
Cross-Reference:	Encroachment Procedure

## Policy Statement

The City of Wetaskiwin recognizes that Encroachments exist and that they will continue to be identified on Municipal Lands, Easements, and rights-of-way. The City must ensure that Encroachments do not cause significant adverse impacts to Municipal Lands or to the City's ability to maintain safe and effective services, and that they do not restrict public access to and enjoyment of Municipal Lands for public use. The City has established this policy to provide a consistent approach for evaluating and authorizing applications for Encroachments involving Municipal Lands, protecting the City's interests in situations concerning Encroachments, and limiting the City's exposure to liability due to unauthorized Encroachments. This policy does not apply to Encroachments on private lands. In the case of a conflict between this policy and the *Municipal Government Act*, RSA 2000, c M-26 or any other applicable federal, provincial, and municipal statute, regulation, order, City bylaw, or City policy, the latter shall govern.

## 1. Definitions

1.1. For the purposes of this policy, the following definitions shall apply:

- a. **City** means the City of Wetaskiwin.
- b. **City-Issued Conditional Letter of Consent** means the City's standard form of letter, as amended from time to time in accordance with this policy, for Encroachments, the criteria for which are outlined in Schedule A.
- c. **City-owned Parcel** means a parcel of land owned by the City for which a certificate of title has been issued in accordance with the *Land Titles Act*, excluding Reserve Parcels.
- d. **Council** means the Municipal Council for the City of Wetaskiwin.
- e. **Easement** means any utility right-of-way or other right-of-way, on privately-owned property, established for the installation, construction, repair, and maintenance of Utilities or for the access and passage of the general public, as identified by a registered plan or by a description, and as documented by a registered caveat or Easement agreement on a particular land title certificate.

- f. **Encroachment** means any development, servicing infrastructure, or landscaping that has advanced beyond a parcel's property line onto one or more adjacent lands.
- g. **Encroachment Agreement** means a written agreement between the City and an Owner which is registered with Alberta Land Titles and under which the City permits an Encroachment onto a road or parcel of land that is under the direction, control, and management of the City.
- h. **Encroachment Authorization** means a City-Issued Conditional Letter of Consent, Encroachment Agreement, or Licence of Occupation approved pursuant to this policy.
- i. **Licence of Occupation** means a contractual agreement between the City and a contractor which allows the Owner or tenant non-exclusive use of specific Municipal Lands for a specified term and license fee.
- j. **Municipal Lands** means any City-owned Parcels, Reserve Parcels, Roads, and Easements.
- k. **Owner** means the person or persons registered under the Land Titles Act as the owner of the fee simple estate in the land. In the context of Encroachments, the term Owner shall refer to the owner of the land which Encroaches onto one or more adjacent Municipal Lands.
- l. **Reserve Parcel** means a parcel that is designated as a municipal reserve, environmental reserve, conservation reserve, community services reserve, public utility lot, school reserve, or municipal and school reserve, as those terms are defined in the Municipal Government Act.
- m. **Road** means either land that is shown as a road on a plan of survey that has been filed or registered in a land titles office, or land used as a public road, including any structure incidental to a public road.
- n. **Utilities** means any lines, systems, infrastructure, or other facilities relating to any one or more of the following:
  - i. the production or distribution of gas or oil products, whether artificial or natural;
  - ii. the distribution or transmission of electricity, telephone, cable television, or telecommunications;
  - iii. the storage, transmission, treatment, distribution, or supply of water;
  - iv. the collection, treatment, movement, or disposal of wastewater;
  - v. the drainage, collection, treatment, movement, or disposal of storm water, including but not limited to collection devices, drainage swales, pipes, pumping stations, manholes, storm water management facilities and wetlands; and/or
  - vi. the applicable Utility departments of the City or other owners of Utilities.

## 2. Provisions

- 2.1. The City shall ensure that any authorized Encroachment does not cause significant adverse impacts to Municipal Lands or to the City's ability to maintain safe and effective services, and that it does not restrict access to and enjoyment of Municipal Lands for public use.
- 2.2. The City shall employ a consistent approach to processing applications for Encroachment Authorizations by following the guidelines set out in this policy.
- 2.3. Any Encroachment Authorization shall take one of the following forms:
  - a. an Encroachment Agreement allowing the Encroachment to remain until such time that the Encroachment or the structure benefiting from the Encroachment is required to be removed or is damaged, or destroyed to the extent of more than 75% of its replacement value, unless the repair or reconstruction is authorized by the City, or other timeframe as specified by the City;
  - b. a City-Issued Conditional Letter of Consent allowing the Encroachment to remain until such time that the Encroachment or the structure benefiting from the Encroachment is required to be removed, or is damaged or destroyed to the extent for more than 75% of its replacement value, unless the repair or reconstruction is authorized by the City, or other timeframe as specified by the City; or
  - c. in the case of Encroachments located wholly on Municipal Lands, a Licence of Occupation issued on an annual basis and subject to an annual licence fee.
- 2.4. An Encroachment Authorization shall include, among other things:
  - a. the location and identification of the Encroachment;
  - b. the Owner's responsibilities to maintain the Encroachment;
  - c. the terms or conditions under which the Encroachment Agreement is terminated;
  - d. the City's right to have access to the land; and
  - e. indemnification of the City, its agents, and licensees.
- 2.5. Encroachments which are authorized by the City may continue to be used but shall not be added to, structurally altered, or rebuilt, except as may be necessary for minor non-structural repairs and aesthetic upkeep.
- 2.6. Upon request by the City or a Utility, an Encroachment which is authorized by the City shall be immediately removed at the expense of the Owner. Encroachments which are not authorized by the City shall be promptly removed at the expense of the Owner.

- 2.7. Proliferation of Encroachments onto Municipal Lands shall be discouraged.
- 2.8. The Owner shall bear full responsibility for any and all costs, expenses, liabilities, or other risks associated with and/or arising from an Encroachment.
- 2.9. In the case of an existing Encroachment which cannot practically be removed, the City may take such steps as it deems reasonable and/or necessary, including but not limited to legal action, to mitigate the negative impacts arising from the Encroachment and shall be at liberty to seek compensation, damages, and/or other redress for any and all corresponding costs and expenses incurred by the City.
- 2.10. The City may sell or lease Municipal Lands upon which an Encroachment is located.
- 2.11. Fees related to Encroachment Authorization shall be established through the Fees and Charges bylaw and are intended to reflect administrative time and fees incurred to prepare and register documents, as well as the City's desire to discourage Encroachments.
- 2.12. Encroachment Authorization fees may only be waived in extenuating circumstances as determined by the Manager of Planning and Development, or where there is an approved development permit or building permit which permitted the Encroachment.
- 2.13. An authorized Encroachment does not relieve an Owner from their responsibility to comply with all applicable federal, provincial, and municipal statutes, regulations, orders, bylaws, and policies.

### **3. Responsibilities**

- 3.1. Council shall:
  - a. receive, review, and consider for adoption this policy and any recommended amendments thereto.
- 3.2. The City's Administration shall:
  - a. make recommendations to Council regarding amendments to this policy;
  - b. review and adopt procedures developed for the implementation of this policy; and
  - c. decide on acceptability of Encroachments onto Municipal Lands in accordance with this policy and associated procedures.
- 2.3. The City Manager shall:
  - a. endorse Encroachment Agreements and Licences of Occupation on the City's behalf.
- 2.4. The City Planning & Development Manager shall:

- a. accept and review applications for Encroachment Authorization;
  - b. decide on acceptability of Encroachments through consultation with affected City departments and other agencies, including Utilities, in accordance with this policy;
  - c. administer and enforce adherence to this policy, including issuing orders for the removal of unauthorized Encroachments;
  - d. prepare and endorse City-Issued Conditional Letters of Consent;
  - e. prepare Encroachment Agreements and Licences of Occupation for endorsement by the City Manager;
  - f. submit Encroachment Agreements to Alberta Land Titles for registration;
- 3.5. Other City Departments and Agencies shall:
- a. review and make recommendations to Planning & Development Services on applications for Encroachment Authorization.
- 3.6. Enforcement Services shall:
- a. enforce Encroachment-related bylaw offences, as appropriate.

#### **4. Guidelines for Encroachment Authorization**

##### **4.1 Guidelines for Encroachments onto Reserve Parcels:**

- a. an Encroachment onto a Reserve Parcel is not permitted and shall be removed, unless it is permitted through the provisions of any other City policy, by bylaw, or in accordance with the *Municipal Government Act*; and
- b. a written application for such Encroachments shall be made to Planning & Development Services for review and authorization.

##### **4.2 Guidelines for Encroachments onto City-owned Parcels:**

- 4.2.1 Encroachments less than 0.05 metres onto City-owned Parcels are authorized; and
- 4.2.2 where an Encroachment extends 0.05 metres or more onto a City-owned Parcel, the Owner must apply to Planning & Development Services for authorization and the Encroachment shall be considered on its own merit in consultation with the relevant City departments and Utilities.

##### **4.3 Guidelines for Encroachments onto Roads and Easements:**

- 4.3.1 Encroachments less than 0.05 metres onto Roads or Easements or that fall under the guidelines outlined in Schedule B are authorized;
- 4.3.2 where an Encroachment extends 0.05 meters or more onto Roads or Easements and does not fall under the guidelines outlined under Schedule B, the Owner must apply to Planning & Development Services for

- authorization and the Encroachment shall be considered on its own merit in consultation with the relevant City departments and Utilities;
- 4.3.3 an Encroachment listed under Schedule A may be authorized by a City-Issued Conditional Letter of Consent; and
  - 4.3.4 notwithstanding anything else in this section, Encroachments affecting Roads and Easements containing well sites, or gas production or high-pressure gas distribution lines, shall be considered on their own merit and must follow Alberta Energy regulations.
- 4.4 Notwithstanding anything else in this policy, an Encroachment shall not be authorized and shall be immediately removed if the Encroachment:
- 4.4.1 poses a safety hazard,
  - 4.4.2 interferes with traffic sightlines,
  - 4.4.3 is located between the sidewalk and roadway curb, where such an area exists,
  - 4.4.4 interferes with the access, use, or maintenance of municipal infrastructure or a Utility,
  - 4.4.5 does not conform to the provisions of an Easement Agreement or Utility Right-of-Way registered on title,
  - 4.4.6 extends onto Municipal Lands intended for or potentially used as an emergency access,
  - 4.4.7 is non-permanent and may be reasonably and practically relocated, except for minor non-permanent surface improvements as outlined in Schedule B.
- 4.5 All applications for Encroachment authorization shall be evaluated with consideration for factors including public safety, future development plans, environmental impacts, existing or future requirements of Utilities, liability, and any other factor relevant to the Encroachment.
- 4.6 The Owner shall promptly remove an Encroachment if Planning & Development Services determines that the Encroachment is not acceptable.
- 4.7 Notwithstanding the City's authorization of an Encroachment, the Owner shall promptly remove the Encroachment as and when required by the City or a Utility to complete necessary work, and the Owner shall be responsible for any and all costs associated with the required removal of an authorized Encroachment.
- 4.8 The City reserves the right, without limitation and at its sole discretion, to limit the term of an Encroachment Authorization or to provide for the termination of an Encroachment Authorization in one or more circumstances specified by the City.
- 4.9 Any Encroachment which has been authorized by an Encroachment Agreement, or any other existing agreement with the City prior to the date of approval of this

policy, shall be deemed to be an authorized Encroachment under this policy, subject to the terms of the authorizing agreement.

**5. Enforcement**

- 5.1. Where, pursuant this policy, an Encroachment has not been authorized, or an application for Encroachment Authorization has not been made, the Owner shall promptly remove the Encroachment at no cost to the City.
- 5.2. Where an Owner does not promptly remove an Encroachment when required to do so pursuant to this policy, or where an Owner fails to apply for authorization when required to do so pursuant to this policy, the City may take action to remove the Encroachment or to relocate any related Utilities and the City may seek reimbursement from the Owner for any and all costs associated with such removal or relocation.
- 5.3. The parties to this policy shall remain subject to any and all applicable federal, provincial, and municipal statutes, regulations, orders, bylaws, and policies beyond the scope of this policy.

<b>Approved By:</b>		<b>Responsible:</b>	
City Manager	Date	General Manager Or Manager	Date

## **Schedule A: Encroachments onto Road or Easements Eligible for City-Issued Conditional Letter of Consent**

The following Encroachments **may** be authorized through a City-Issued Conditional Letter of Consent upon application by the Owner. The City may, at its discretion, require another type of Enforcement Authorization instead.

1. Subject to other restrictions and any conditions which may be required by the City or a Utility, an Encroachment of less than 0.3 metres onto an Easement not otherwise outlined in Schedule B.
2. A fence or barrier which crosses an Easement or separates an Easement from the nearest Road or City-owned Parcel, preventing direct access by the City, provided that:
  - a. It has sections that can be removed and replaced without machinery or equipment,
  - b. The length of each section is greater than 2.4 metres on each affected lot,
  - c. The support pillars encroach no more than 0.6 metres onto the Easement, and
  - d. The access to and use of the Easement is not adversely affected.
3. Hedges and shrubs which do not interfere with City or Utility maintenance activities or traffic sightlines.
4. Notwithstanding anything else in this policy, the City Manager shall have the sole discretion to determine whether or not an Encroachment is of such a minor nature that the City will proceed to issue a City-Issued Conditional Letter of Consent for the Encroachment rather than require the execution of an Encroachment Agreement.

## **Schedule B: Encroachments Not Requiring Authorization**

### Encroachments onto Roads Not Requiring Authorization

1. Driveways or walkways providing access to a property and constructed in accordance with the City's Land Use Bylaw, excluding structures that do not directly benefit the access or that may adversely affect access to or use of the Road.
2. Fence sections that encroach less than 0.3 meters onto a Road, providing that no Utilities are captured within the fence sections.
3. Concrete or asphalt garage aprons that encroach less than 0.3 meters onto a lane.
4. Minor, non-permanent surface improvements including:
  - a. Synthetic turf;
  - b. Natural landscaping excluding trees and shrubbery;
  - c. Ground cover including mulch or pea gravel.
5. Signs, awnings, or canopies that are in accordance with the City's Land Use Bylaw.
6. Sidewalk patios that are in accordance with the City's Land Use Bylaw.
7. Any Encroachment constructed for valid municipal purposes by the City or its agents.

### Encroachments onto Easements Not Requiring Authorization

1. Driveways or walkways providing access to a property and constructed in accordance with the City's Land Use Bylaw, excluding structures that do not directly benefit the access or that may adversely affect access to or use of the Easement.
2. Fence sections that span an Easement or encroach less than 0.3 meters onto an Easement, except where the purpose of the Easement is to provide access for the general public.
3. Minor, non-permanent surface improvements including:
  - a. Synthetic turf;
  - b. Natural landscaping excluding trees and shrubbery;
  - c. Ground cover including mulch or pea gravel.
4. Eaves encroaching less than 0.1 metres onto an Easement.