

	Encroachment Policy	
	Policy Type:	Council-Management Delegation
	Number:	CMD-P-3.8
	To be Reviewed:	Once per term
	Approval Date:	October 14, 2003
	Motion Number:	03.C.479, 15.C.304, 15.C.436, 19.C.284
	Revised Date(s):	May 25, 2015 August 17, 2015 June 10, 2019

Policy Statement:

The Encroachment Policy states when and where encroachments are/are not permitted to provide a consistent approach in the management of encroachments on public lands, streets, easements and rights-of-way managed by the Town of Okotoks.

Responsibilities: Chief Administrative Officer

1.0 Definitions:

Applicant is the Owner of land adjacent to Municipal Lands or Streets, or the Owner of land encumbered by an easement, who has an encroachment on the said municipal lands, street or easement.

Caveat means a formal notification that is registered on the title of a parcel of land.

Council means the Council of the Town of Okotoks.

Easement means any right-of-way for the passage and maintenance of public utilities, identified by a registered plan, or by description, and documented by a Registered Easement Agreement granted to the Town.

Encroachment means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground, that extends on, over or under lands owned or administered by the Town of Okotoks. This does not include Utilities authorized by the Town and located within an Easement, Street or Town Owned Parcel.

Encroachment Agreement means an agreement between the applicant and the Town authorizing an encroachment and shall, among other things, include:

- a) Cost and responsibility for removal;
- b) Indemnification of the Town, its agents or licensees;
- c) Location and identification of the encroachment;
- d) Term; and
- e) Termination notice.

For the purposes of this Policy, the term Encroachment Agreement is used to apply to any agreement that authorizes an encroachment, including but not limited to Encroachment Agreements and Utility Right-of-Way Amending Agreements.

Municipal Lands means collectively, or individually, an easement, reserve or Town owned parcel.

Owner means the person, or persons, registered under the *Land Titles Act* as the owner of the fee simple estate in the land.

Park includes all municipal reserves (MR), environmental reserves (ER), conservation reserves (CR), municipal and school reserves (MSR) or school reserves (SR) as defined in the Municipal Government Act, (Sections 664, 665 and 666) or lands designated as Environmental Protection pursuant to the Land Use Bylaw or designated as public park by resolution of Council.

Street means any thoroughfare, highway, road, trail, avenue, viaduct, lane, alley, square, bridge, causeway, trestle, sidewalk, walkway, pathway, road right-of-way or other place, which are:

- a) shown as a road on a plan of survey that has been filed or registered in a land titles office; or
 - b) used as a public road; or
- any part of which the public is entitled or permitted to use.

Town Owned Parcel means any land owned by the Town for which a certificate of title has been issued in accordance with the *Land Titles Act*, excluding Parks.

Utility means any one or more of the following:

- a) Systems for the distribution of gas, whether artificial or natural, electricity, telephone, cable television and oil products;
- b) Facilities for the storage, transmission, treatment, distribution or supply of water;
- c) Facilities for the collection, treatment, movement or disposal of sanitary sewage, including pumping stations;
- d) Storm sewer drainage facilities, including collection at grade and below grade, pumping stations, stormwater ponds and wetlands;
- e) Any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

2.0 Encroachment Policy

2.1 No encroachments of private development shall be allowed or authorized, except where:

- a) An encroachment is identified as being authorized into a street, easement, or municipal lands under Section 3, 4, 5 or 6;

- b) An encroachment has been authorized by the Town by written agreement; or
 - c) An application for an Encroachment Agreement has been made for an encroachment and is still being considered for authorization.
- 2.2 Unless an encroachment is authorized by the Town, the encroachment shall be removed from the affected street, easement, or municipal lands.
- 2.3 Where an Encroachment Agreement includes a provision for removal following notice by the Town, such notice will be made for a valid municipal purpose only.
- 2.4 Where an encroachment has been authorized by the Town, an Applicant shall pay the application fee established by Council and execute the Encroachment Agreement prepared and delivered by the Town, or the encroachment shall be removed from the street, easement, or municipal lands.
- 2.5 An Encroachment Agreement authorized by the Town, and executed by the Applicant, shall be registered by caveat on the title of the Applicant's land.
- 2.6 Utilities located within an easement, public utility lot, Town owned parcel or street authorized by the Town, will not be considered as an encroachment.
- 2.7 An authorized Encroachment Agreement does not release an Applicant from the responsibility to comply with any other Provincial or Federal requirements or municipal by-laws.
- 2.8 Every encroachment application shall be reviewed on its own merits, considering factors including but not limited to: effects of the encroachment(s) on the operation, maintenance and replacement of the affected utility or street; effects on the operation and maintenance of public lands or delivery of public services; effects on adjacent properties; details of any relevant easement agreement(s) on title; and risk to occupants, utility operators or the public.
- 2.9 All encroachment applications shall be referred to the operators or municipal departments responsible for all utilities, streets, easements, public lands or public services affected by the encroachment(s) for their comments and consent. Where consent is withheld by an affected operator or municipal department for reasons as outlined in section 2.8, the application shall be refused.
- 2.10 All expenses, costs, liabilities, or other risk associated with an authorized encroachment shall be borne by the Owner.

3.0 Guidelines For Encroachments into Parks

- 3.1 An encroachment into a Park is not permitted and shall be removed from the Park except in accordance with Section 3.2.
- 3.2 Shrubs, trees, or other plant or organic landscape materials may be permitted where the encroachment is deemed to be in the best interests of the public (i.e. improved aesthetics) and is approved by the Town in writing. Encroachment Agreements are not required for the encroachment of plant or organic landscape materials, provided written consent has been granted by the Town.

4.0 Guidelines for Encroachments into Town Owned Parcels (excluding Parks)

- 4.1 Where an encroachment extends into a Town owned parcel, the Owner may apply to the Town for an Encroachment Agreement and the encroachment will be considered on its own merits in consultation with the applicable Town services and affected Utilities.
- 4.2 The Owner shall remove an encroachment from a Town owned parcel if the Town determines that the encroachment is not acceptable, in accordance with Section 2.8.

5.0 Guidelines for Encroachments into Streets

- 5.1 Surface improvements such as driveways and sidewalks that do not project above finished grade and provide access to a site may encroach into a street and do not require an Encroachment Agreement.
- 5.2 Irrigation systems installed prior to June 10, 2019 may encroach into a street and do not require an Encroachment Agreement, subject to approval by the Town. As of June 10, 2019, new private irrigation systems will not be permitted in streets.
- 5.3 Encroachments into streets will be reviewed by Development Services and circulated to any other affected Town service and affected Utilities. If Development Services determines the encroachment to be acceptable, an Encroachment Agreement may be granted, subject to the Owner paying the applicable fees. If the encroachment is not deemed acceptable, the Owner will be required to remove the encroachment.
- 5.4 Outdoor seating areas for eating establishments that have received approval from the Town and remain compliant with any Licence of Occupation issued by the Town may encroach into a street and do not require an Encroachment Agreement.
- 5.5 Projecting Signs that comply with the Land Use Bylaw may encroach entirely into a street subject to issuance of an Encroachment Agreement, provided the sign does not, in the opinion of the Town, affect maintenance or operation of the street or safety of the public. In the Central Business Commercial (CCB) District, the Encroachment Agreement application fee established by Council is waived for the encroachment of projecting signs.

6.0 Guidelines for Encroachments into Easements

- 6.1 Surface improvements such as driveways and sidewalks that do not project above finished grade and provide access to a site may encroach into an easement and do not require an Encroachment Agreement. Steps may be incorporated into sidewalks where necessary to transition from one elevation to another and provide safe access to a site. This does not include steps to access the entrance of a building from the sidewalk or finished grade.
- 6.2 Fence sections that cross an easement perpendicular to the right of way may encroach into an easement and do not require an Encroachment Agreement.

- 6.3 Retaining Walls not greater than 0.3m (12") in height that cross an easement perpendicular to the right of way may encroach into an easement and do not require an Encroachment Agreement, provided, however, that this does not apply to rights-of-way or easements for the purpose of overland drainage.
- 6.4 Irrigation systems may encroach into an easement and do not require an Encroachment Agreement, subject to approval by the affected municipal departments and Utilities. This does not apply where irrigation systems are prohibited under other bylaws, policies or standards.
- 6.5 Non-permanent landscaping features such as mulch, perennial and annual plants, and landscape edging that does not project more than 0.2m above grade, may encroach into an easement and do not require an Encroachment Agreement.
- 6.6 Eaves of a residential building constructed at or above a height of 2.4m (7.8 ft) from finished grade, encroaching not more than 0.6m (1.96ft), may be considered provided the building or structure does not encroach and the encroachment does not, in the opinion of the Town, have the potential to interfere with the operation or maintenance of any above-ground features associated with the right-of-way (e.g. power lines, pedestals).

7.0 General Guidelines

- 7.1 Notwithstanding any other provision of this policy, an encroachment shall not interfere with access to, or use, operation, maintenance or replacement of, utilities, easements or streets by the Town, owners of Utilities, or users of the utilities, easements or streets, and nothing in this policy is intended to restrict or limit any rights in relation to the access to, or use of, utilities, easements and streets.
- 7.2 Notwithstanding any other provision of this policy, the Town reserves the right to limit the term of an Encroachment Agreement, or other authorization, or provide for the termination of an encroachment agreement, or other authorization.

8.0 Enforcement

- 8.1 If, following the provisions of this policy, an encroachment has not been approved or an application for an Encroachment Agreement has not been made, the Owner shall remove the encroachment at no cost to the Town.
- 8.2 If the Owner refuses to remove the encroachment, or fails to apply for authorization, the Town may take action to remove the encroachment or relocate the utility (as the case may be) and seek reimbursement from the Owner for all such costs in accordance with the applicable Town bylaws and policies and in accordance with the *Municipal Government Act*. Any of the costs not paid shall be added to or deemed to be part of the taxes on the Owner(s) land.
- 8.3 The Owner shall also be subject to any and all applicable federal, provincial and municipal statutes, regulations, orders, bylaws and policies beyond the scope of this policy.