

City of Lacombe
Bylaw 513

A Bylaw of the City of Lacombe, in the Province of Alberta (hereinafter referred to as "the Municipality"), to address Encroachments on City-owned land, streets and easements.

WHEREAS, pursuant to the Municipal Government Act, RSA 2000, c M-26, a municipality shall pass bylaws dealing with the use and management of its property and prohibiting or regulating any development;

AND WHEREAS, the Act empowers municipalities to pass bylaws providing them with a system of permits and approvals for any development, and terms and conditions that may be imposed, establishing fees for such permits and approvals and enforcement provisions;

AND WHEREAS, Section 651.2 of the Act empowers municipalities to permit Encroachments onto a road by Agreement;

AND WHEREAS, Section 72 of the Land Titles Act, RSA 2000, c L-4, permits the registration of Encroachment Agreements on the affected parcels of land;

AND WHEREAS, the City recognizes its responsibility to the residents of the City of Lacombe to maintain and operate effective and safe services and to enable public access to lands intended for public use and enjoyment;

AND WHEREAS, the City recognizes the importance of upholding these responsibilities by effectively managing Encroachments on to City-owned land, streets, and easements;

AND WHEREAS, City-owned land, streets, and easements include, among other things, boulevards, sidewalks, roads, bridges, alleyways, parkways, trails, lanes, utility-rights-of-way, overland drainage easements, and titled parcels of land owned by the City of Lacombe including but not limited to Parks and Reserve land;

NOW, THEREFORE, the Council of the City of Lacombe duly assembled hereby enacts as follows:

1. Bylaw Title

1.1. The Bylaw shall be referred to as the "Encroachment Bylaw."

2. Schedules

2.1. Schedule "A" – Penalties, Fines, and Fees are attached and form part of this Bylaw.

3. Definitions

In this Bylaw:

3.1. "Act" shall mean the Municipal Government Act, RSA 2000, c M-26, as amended;

3.2. "CAO" shall mean the person appointed by the Council of the City of Lacombe as the Chief Administrative Officer or their designate;

3.3. "City" shall mean the City of Lacombe;

3.4. "City Land" and "City Property" shall mean titled and non-titled land owned by or that is the direct responsibility of the City of Lacombe;

3.5. "Council" shall mean the duly elected municipal Council of the City of Lacombe;

3.6. "Egregious Encroachments" shall mean any encroachment assessed by CAO as egregious. Egregious Encroachments are not eligible for an Encroachment Agreement

and will be subject to escalating fines per the Specified Penalties contained in Schedule A;

- 3.7. "Encroachment" shall mean anything constructed or erected permanently or semi-permanently on the ground or attached to something that is permanent or semi-permanent extending on, over or under Titled property onto City Land or City Property and shall include, but not be limited to, the following:
- a. Buildings and all projections (including but not limited to eaves, footings, foundations, weeping tiles, and cantilevers) and siding;
 - b. Sheds, including those attached to a dwelling or fence;
 - c. Fences;
 - d. Hard landscaping includes but is not limited to asphalt, concrete, or brick sidewalks, curbs, parking pads, fire pits, and planters. Driveways, walkways and aprons adjacent to a roadway or sidewalk require approval.
 - e. Structures which include but are not limited to decks, stairs, patios, and balconies;
 - f. Retaining walls;
 - g. Swimming pools and hot tubs;
 - h. Private light standards;
 - i. Signs.
- 3.8. "Encroachment Agreement" shall mean an agreement between the applicant and the City authorizing an Encroachment and shall, among other things, include:
- a. Cost and responsibility for removal;
 - b. Indemnification of the City, its agents or licensees;
 - c. Location and identification of Encroachment;
 - d. Term; and
 - e. Termination notice
- 3.9. "Major Encroachments" shall mean Encroachments not eligible for an Encroachment Agreement and/or all Encroachments greater than 1.0 metres. Major Encroachments are subject to escalating fines per the Specified Penalties contained in Schedule A.
- 3.10. "Minor Encroachment" shall mean encroaching less than or equal to 0.20 metres. If the City has no record of the Encroachment negatively impacting City operations, no Encroachment Agreement is required; the Owner is provided with a letter stating the City acknowledges and does not object to the Encroachment at this time for their records. Encroachments that negatively impact City operations are escalated to Moderate Encroachment.
- 3.11. "Moderate Encroachment" shall refer to encroachments that are either encroaching less than or equal to 0.20 metres, with a record of the Encroachment negatively impacting City operations; OR refers to Encroachments greater than 0.20 metres but not more than 1.0 metres. The Encroachments that are not eligible for an Encroachment Agreement (i.e. they disrupt City operations) are escalated to Major Encroachment.
- 3.12. "Park" shall mean areas of public land known for their natural scenery and/or preservation for public recreation, either active or passive.
- 3.13. "Property Owner" shall mean the person(s) shown as the Owner (s) of land as verified on the City's Assessment Roll and current Land Title.
- 3.14. "Reserve" shall mean environmental reserve, conservation reserve, community services reserve, municipal reserve or school reserve, or any combination of reserve lands as the legal description identifies.

4. Prohibitions Against Encroachments

- 4.1. A person shall not place or allow to be placed an Encroachment onto City Property or land in which the City has an interest.
- 4.2. Notwithstanding any other provision in this Bylaw, a person must not place or allow to be placed an Encroachment onto Reserve land.
- 4.3. Notwithstanding any other provision in this Bylaw, a person must not place or allow to be placed an Encroachment on a Park.
- 4.4. A Property Owner must not allow an Encroachment to remain on City Property or land in which the City has an interest, Reserve land or Park after receiving a notice of removal under Section 7.
- 4.5. The placement of developments on City Land will be measured to determine the severity of the Encroachment. The following will determine how an Encroachment is categorized:
 - a. Minor Encroachment - Less than .20 metres and no record of a negative impact to City operations or public enjoyment of property;
 - b. Moderate Encroachment - Less than .20 metres and negative impact on the City or public enjoyment, or an Encroachment between .21 metres and 1 metre with no negative impact on City operation or public enjoyment;
 - c. Major Encroachment – Encroachments greater than 1 metre or less OR equal to one metre with a negative impact that disrupts City operations, or public enjoyment of land.
 - d. Egregious Encroachment – any Encroachment assessed by the CAO that exceeds the limits of a Minor, Moderate or Major Encroachment.
- 4.6. Encroachments classified as Minor or Moderate may be considered for an Encroachment Agreement provided they are pre-existing to the date of this Bylaw being adopted and the following circumstances exist:
 - a. The Encroachment does not interfere with the safety of the public, the City or a utility provider;
 - b. The Encroachment does not extend onto City Land that is intended by the City for or may be used as emergency access;
 - c. The Encroachment does not interfere with the City's or a utility provider's ability to access, maintain and operate its utility infrastructure on a City Property or interest;
 - d. The Encroachment does not interfere with the City's ability to access, maintain and operate services on the City Property or interest;
 - e. The Encroachment does not interfere with the public's ability to access City Land intended for public use, for its use and enjoyment; and
 - f. The Encroachment is not permanent and can be reasonably and practically relocated.
- 4.7. Major or Egregious Encroachments are ineligible for Encroachment Agreements and will be subject to penalties as per Section 12 Specified Penalties.

5. Responsibilities of Persons with Encroachments

- 5.1. Should an Encroachment be found on a City Property or interest, the Property Owner encroaching on the City Property must either remove the Encroachment or submit an Encroachment Agreement application to Planning and Development Services.
- 5.2. Only Property Owners are eligible to file a completed Encroachment Agreement application with Planning and Development Services.
- 5.3. A Property Owner must comply with the terms and conditions of any written authorization provided by the City.

- 5.4. A Property Owner who receives a refusal letter must remove any Encroachment already placed within thirty (30) days of receiving the letter.
- 5.5. A Property Owner who receives a notice of removal must remove the Encroachment and restore the impacted area in accordance with the requirements and timeframe set out in the notice.
- 5.6. A Property Owner who receives a refusal letter or notice of removal letter must undertake any removal and restoration work at their sole cost and expense.

6. Denial of Applications

- 6.1. Notwithstanding anything in this Bylaw, the CAO shall refuse to approve an Encroachment application and must issue a refusal letter if, in the CAO's opinion, the proposed or existing Encroachment:
 - a. interferes with the safety of the public, the City or a utility provider;
 - b. extends onto City Land that is intended by the City for or may be used as emergency access;
 - c. interferes with the City's or a utility provider's ability to access, maintain and operate its utility infrastructure on a City Property or interest;
 - d. interferes with the City's ability to access, maintain and operate services on the City Property or interest;
 - e. interferes with the public's ability to access City Land intended for public use, for its use and enjoyment; or
 - f. is not in the best interests of the City of Lacombe or its residents.
- 6.2. Where the CAO denies an application for an Encroachment after receiving a completed Encroachment Agreement application, the CAO must issue the applicant a refusal letter.
- 6.3. A refusal letter must include the CAO's reasons for refusing the application.

7. Removal Notices

- 7.1. Where the CAO believes that an Encroachment exists that should be removed, the CAO may issue a notice to the Property Owner requiring one or more of the following:
 - a. the Property Owner removes the Encroachment within a certain timeframe;
 - b. that specific work standards and specifications be met in any demolition, construction, or landscaping done to remove the Encroachment;
 - c. that the restoration of the impacted area on the Property Owner's property and the City Property or interest be done to specific standards and specifications to ensure health and safety; and
 - d. the person doing the removal and restoration has insurance naming the City as an additional named insured and has agreed to indemnify the City for any losses arising from their work.

8. Termination of Agreements

- 8.1. Where the CAO has given notice that it is terminating a written authorization entered into under this Bylaw or an Encroachment Agreement or grandfathered written authorization entered into prior to this Bylaw being passed, the notice will be sent to the current Property Owner and that Property Owner must remove the Encroachment within thirty (30) days.
- 8.2. The Encroachment Agreement will be terminated if the Property Owner removes the structure or development for any reason, such as, but not limited to, repair or replacement. Any further development or structure must be placed wholly on the Property Owner's land and may no longer be an Encroachment on City Land.

9. Authority of the Chief Administrative Officer (CAO)

- 9.1. The CAO may:
- a. provide written authorization for Encroachments on such terms, conditions, and duration as the CAO considers appropriate for the circumstances;
 - b. decide what form of written authorization is appropriate for a particular Encroachment, and
 - c. issue refusal letters and removal notices pursuant to Sections 6 and 7 of this Bylaw.
- 9.2. The CAO may approve Encroachment application guidelines that contain procedures and considerations for receiving and reviewing applications for Encroachments, including:
- a. setting out the process and fees for receiving applications for Encroachments and requirements for the form and content of the applications to be considered complete;
 - b. specifying factors that may be considered in deciding whether to approve an application for an Encroachment Agreement;
 - c. setting the amount of one-time, daily, monthly, and/or annual fees or charges for Encroachments;
 - d. setting the standard form, terms, and conditions of an Encroachment Agreement, applications, and written authorizations; and
 - e. specifying the form and content of refusal letters and removal notices in response to applications for an Encroachment.
- 9.3. The CAO may amend or revoke all or any part of the Encroachment guidelines at any time.
- 9.4. The CAO may consider the following when deciding whether to approve an application and issue written authorization:
- a. The interests of the City and the citizens of Lacombe;
 - b. Whether there is a reason to refuse as set out in Section 6, and
 - c. Any considerations listed in approved Encroachment guidelines.
- 9.5. Nothing in this Section or any approved Encroachment guidelines precludes the CAO from including other terms and conditions, varying any standard terms and conditions, or modifying the form and content of a written authorization in any particular case that, in the CAO's opinion, is necessary for the specific Encroachment under consideration.
- 9.6. The CAO may delegate any or all of the powers granted to the CAO pursuant to this Bylaw at any time.

10. Offences

- 10.1. Any person who contravenes any provision of this Bylaw by doing any act or thing which the person is prohibited from doing or by failing to do any act or thing the person is required to do is guilty of an offence under this Bylaw.
- 10.2. Any person who is convicted of an offence pursuant to this Bylaw is liable on summary conviction to a fine not exceeding \$10,000 and, in default of payment of any fine imposed, to a period of imprisonment not exceeding six (6) months.
- 10.3. All violations of this Bylaw, which are of a continuing nature, will constitute a separate offence for each day the offence continues.
- 10.4. A Property Owner is guilty of an offence referred to in this Bylaw whether they caused or allowed the Encroachment to be initially placed.

11. Enforcement

- 11.1. A Peace Officer who has reasonable grounds to believe that a person has contravened any provision of this Bylaw may issue and serve upon the person:
 - a. A Municipal Ticket allowing payment of the specified penalty as set out in Schedule A of this Bylaw to the City. Such payment will be accepted by the City in lieu of prosecution for the offence. Should payment of the specified penalty not be made to the City within the time specified on the Municipal Ticket, a Violation Ticket may be issued and served upon the person; or
 - b. A Violation Ticket, allowing a voluntary payment of the specified penalty as set out in Schedule A of this Bylaw or requiring a person to appear in court without the alternative of making a voluntary payment.
- 11.2. Where a Peace Officer believes that a person has contravened any provision of this Bylaw, the officer may commence proceedings against the person by issuing a violation ticket in accordance with the Provincial Offences Procedure Act, RSA 2000, c P-34.
- 11.3. This Section does not prevent any officer from issuing a violation ticket requiring a court appearance of the defendant, pursuant to Provincial Offences Procedures Act, RSA 2000 c P-24 provisions, or from laying an information in lieu of issuing a violation ticket.
- 11.4. Nothing in Section 11 prevents a Peace Officer from issuing a Violation Ticket without first issuing a Municipal Ticket.

12. Specified Penalties

- 12.1. Where there is a specified penalty listed for an offence in Schedule A to this Bylaw, that amount is the specified penalty for the offence.
- 12.2. On conviction of an offence that is of a continuing nature, the penalty is the amount set out in Schedule A of this Bylaw in respect of the offence of each year, or part of a year, that the offence continues.
- 12.3. The levying and payment of any fine or the imprisonment of any period provided in this Bylaw shall not relieve a person from the necessity of paying any fees, charges, or costs from which that person is liable under the provisions of this Bylaw or any other bylaw.

13. Remedial Orders

- 13.1. Where a person has contravened any provision of this Bylaw, an officer may issue a remedial order requiring the person to remedy the contravention pursuant to Section 545 of the Act.
- 13.2. A remedial order issued pursuant to Section 545 of the Act must include the following:
 - a. indicate the person to whom it is directed;
 - b. identify the property to which the remedial order relates by municipal address or legal description;
 - c. identify the date that it is issued;
 - d. identify how the Encroachment fails to comply with this or another bylaw;
 - e. identify the specific provisions of the Bylaw that are being contravened;
 - f. identify the nature of the remedial action required to be taken to bring the property into compliance;
 - g. identify the time within which the remedial action must be completed;
 - h. indicate that if the required remedial action is not completed within the time specified, the City may take whatever action or measures are necessary to remedy the contravention;

- i. indicate that the expenses and costs of any action or measures taken by the City under this Section are an amount owing to the City by the person to whom the order is directed pursuant to Section 549(3) of the Act;
- j. indicate that the expenses and costs referred to in this Section may be attached to the tax roll of the Property Owner's property if such costs are not paid by a specified time;
- k. indicate that an appeal lies from the remedial order to Council if a notice of appeal is filed in writing with the Legislative Coordinator within fourteen days of the receipt of the remedial order.

13.3. A remedial order issued pursuant to this Bylaw may be served:

- a. in the case of an individual:
 - (i) by delivering it personally to the individual;
 - (ii) by leaving it for the individual at their apparent place of residence with someone who appears to be at least 18 years of age;
 - (iii) by delivering it by registered mail to the individual at their apparent place of residence; or
 - (iv) by delivering it by registered mail to the last address of the individual who is to be served as shown on the records of the municipal tax roll for the individual;
- b. in the case of a corporation:
 - (i) by delivering it personally to a director or officer of the corporation;
 - (ii) by delivering it personally to any person apparently in charge of an office of the corporation at the address held out by the corporation to be its address; or
 - (iii) by delivering it by registered mail addressed to the registered office of the corporation.

13.4. If, in the opinion of a person serving a remedial order, service of the remedial order cannot be reasonably effected, or if the person serving the remedial order believes that the Property Owner of the property is evading service, the person serving the remedial order may post the remedial order:

- a. at a conspicuous place on the property to which the remedial order relates;
- b. at the private dwelling place of the Property Owner of the property to which the remedial order relates, as shown on a certificate of title pursuant to the Land Titles Act RSA 2000, c L-4 or on the municipal tax roll; or
- c. at any other property owned by the Property Owner of the property to which the remedial order relates, as shown on a certificate of title pursuant to the Land Titles Act RSA 2000, c L-4 or shown on the municipal tax roll;
- d. and the remedial order shall be deemed to be served upon the expiry of 3 days after the remedial order is posted.

13.5. A person who fails to comply with a remedial order within the time set out in the remedial order commits an offence.

13.6. Where the City effects a remedial order, City employees and agents may enter a Property Owner's property upon reasonable notice to undertake the removal and restoration work.

13.7. The Property Owner of a parcel is liable to the City for any costs and expenses related to the removal of an Encroachment or other measures taken by the City to remedy a contravention of this Bylaw, and such costs and expenses become a debt owing to the City and may be added to the tax roll of the Property Owner's parcel where the contravention occurred on a part of the Property Owner's parcel.

14. Appeal to Council

14.1. A person:

- a. who has been refused an Encroachment Agreement;
- b. whose Encroachment Agreement has been suspended or revoked; or
- c. whose Encroachment Agreement is made subject to conditions other than conditions imposed by this Bylaw;

may appeal the decision within fourteen (14) days by providing written notice to the Legislative Coordinator and paying the notice of appeal fee set out in Schedule A.

- 14.2. Where a Property Owner has given notice of an intention to appeal the revocation, suspension or conditions of an Encroachment Agreement, the CAO may, in the CAO's sole discretion, stay the revocation, suspension or conditions pending the hearing of the appeal if the continued Encroachment does not create a danger to the safety, health or welfare of the public.

15. Effective Date

- 15.1. This Bylaw shall come into force and effect when it receives third reading and is duly signed.

16. Severability

- 16.1. If any portion of this Bylaw is declared invalid by a court of competent jurisdiction, then the invalid portion must be severed, and the remainder of the Bylaw is deemed valid.

INTRODUCED AND GIVEN FIRST READING THIS 25th day of March, 2024.

GIVEN SECOND READING THIS 22nd day of April, 2024.

GIVEN THIRD AND FINAL READING THIS 13th day of May, 2024.

Original Signed

Mayor

Original Signed

Chief Administrative Officer

Schedule A – Penalties, Fines and Fees

Penalties and Fines

Description	Section	Fine Amounts		
		First Offence	Second Offence	Third and Subsequent Offences
Unauthorized Encroachment	4.1 4.2 4.3	\$150	\$250	\$500
Failure to Remove Encroachment - Major	4.4 4.5(c)	\$250	\$500	\$1,000
Failure to Remove Encroachment - Egregious	4.4 4.5(d)	\$500	\$1,000	\$2,000
Failure to Comply with Terms and Conditions	5.4 5.5 13.5	\$250	\$500	\$1,000

Fee Schedule

Description	Section	Fees Amount
Appeal Fee	14.1(c)	\$100