



### ENCROACHMENT POLICY

<b>Policy Number:</b>	69/361.01 2024ADP
<b>Policy Review:</b>	Every 5 Years
<b>Policy Owner (Dept.):</b>	Planning & Development Services
<b>Reference(s):</b>	City of Lacombe Land Use Bylaw City of Lacombe Encroachment Bylaw Land Use Bylaw Enforcement Directive

#### 1. PURPOSE OF POLICY

- 1.1. To establish standards that will define Encroachments the City may allow and to clearly outline the City’s enforcement approach to unauthorized Encroachments onto City Land.

#### 2. POLICY STATEMENT

- 2.1. To establish a consistent and clear approach in the management of Encroachments onto City Land.

#### 3. APPLICABILITY

- 3.1. This policy applies to private encroachments onto City Land and does not include encroachments between private property owners.
- 3.2. This Policy comes into effect upon approval of the Chief Administrative Officer.

#### 4. DEFINITIONS AND ABBREVIATIONS

- 4.1. **CAO** – Chief Administrative Officer.
- 4.2. **City Land** - titled and non-titled land owned by or that is the direct responsibility of the City of Lacombe.
- 4.3. **Egregious Encroachment** – term - as defined in the City’s Encroachment Bylaw.
- 4.4. **Encroachment** – term - as defined in the City’s Encroachment Bylaw.
- 4.5. **Encroachment Agreement** – term - as defined in the City’s Encroachment Bylaw.
- 4.6. **License to Occupy** – a contractual agreement between the City and a Property Owner that allows the use of specific lands for a specified term and license fee.
- 4.7. **Major Encroachment** – term - as defined in the City’s Encroachment Bylaw.
- 4.8. **Minor Encroachment** – term - as defined in the City’s Encroachment Bylaw.
- 4.9. **Moderate Encroachment** – term - as defined in the City’s Encroachment Bylaw.

- 4.10. **Property Owner** - term - as defined in the City’s Encroachment Bylaw.
- 4.11. **Real Property Report (RPR)** – A legal document that clearly illustrates the location of structures and visible improvements relative to property boundaries. It can be relied on as an accurate representation of the improvements to a property.

## 5. ROLES AND RESPONSIBILITIES

### 5.1. Chief Administrative Officer

- 5.1.1. Implement this Policy and ensure staff compliance.
- 5.1.2. Consider appeals from Property Owners of denied Encroachment Agreement applications, as required.
- 5.1.3. Consider recommendations on the allowance or refusal of encroachments.
- 5.1.4. Sign Encroachment Agreements or provide approval for authorization letter.

### 5.2. Planning & Development Services Department

- 5.2.1. Ensure all Encroachments onto City Lands are dealt with in a timely manner according to this Policy.
- 5.2.2. Advise Property Owner of the process of reviewing Encroachments onto City Land.
- 5.2.3. Advise Property Owner on process for obtaining authorization for an Encroachment.
- 5.2.4. Receive and review requests for Encroachment Agreements from Property Owners.
- 5.2.5. Determine whether Encroachment Agreements with Property Owners are permitted.
- 5.2.6. Prepare Encroachments Agreements as required.
- 5.2.7. The Department will consult with the CAO on issues and provide recommendations to the CAO on Encroachment Agreements, as required.

### 5.3. Bylaw Department

- 5.3.1. To provide enforcement on properties with egregious encroachments, as per the Encroachment Bylaw.

### 5.4. Property Owners

- 5.4.1. Be aware of the location of their property boundaries by relying on professional land survey plans.
- 5.4.2. Construct improvements so as to not encroach upon City Lands.
- 5.4.3. Work with the City to effectively eliminate unauthorized Encroachments and, if necessary, restore City Land back to the original or intended state to the satisfaction of the City.



### 6. POLICY DETAILS

#### 6.1. General Provisions

- 6.1.1. The Property Owner is responsible for placement of fences, structures, or other developments within their property boundary, in accordance with the City of Lacombe Land Use Bylaw.
- 6.1.2. The City will not allow new encroachments onto City Land and will discourage existing encroachments to remain in place.
- 6.1.3. The City has sole and absolute discretion to decide whether to enter into an Encroachment Agreement with a Property Owner.
- 6.1.4. The City will not enter into an Encroachment Agreement where the City determines in its sole discretion that any one or more of the following circumstances exist:
  - 6.1.4.1. the Encroachment causes safety concern;
  - 6.1.4.2. the Encroachment extends onto City Land that are intended by the City for or may be used as an emergency access;
  - 6.1.4.3. the Encroachment interferes with the City's ability, or the ability of a utility company to access an easement;
  - 6.1.4.4. the structures, fences, or objects at issue are not permanent and can be reasonably and practically relocated.
- 6.1.5. The Property Owner shall be responsible for all expenses, costs, liabilities or other risks associated with the Encroachment.
- 6.1.6. All Encroachments without existing Encroachment Agreements or Written Authorization shall be dealt with according to this Policy. There shall be no grandfathered Encroachments, regardless of the length of time an Encroachment has been in existence.

#### 6.2. Procedures

- 6.2.1. Each application for an Encroachment Agreement must submit specific documentation, as outlined in this Policy.
- 6.2.2. Planning & Development Services shall consider an Encroachment Agreement application based on the circumstances of the specific Encroachment and decide whether to recommend to the CAO to enter an Encroachment Agreement. The following will be considered:
  - 6.2.2.1. Legal concerns, whether an Encroachment is contrary to an act or bylaw that forbids granting an Encroachment Agreement;
  - 6.2.2.2. Liability concerns, including whether an Encroachment may create liability for the City;

- 6.2.2.3. Access concerns, including whether an Encroachment may deny access to public space or occupies space in a manner that narrows or impedes visibility or access to, or along a public roadway or lane;
- 6.2.2.4. Safety concerns, including whether an Encroachment creates safety issues for the City or public;
- 6.2.2.5. Unsightliness concerns, including whether an Encroachment may create an unsightly condition or an appearance not confirming to the look and appeal for the general neighbourhood, or may create or worsen the placement of debris or other materials that result in an unsightly appearance;
- 6.2.2.6. Fairness concerns, including whether an Encroachment may increase the usable area for a Property Owner, for which the Property Owner is not taxed.
- 6.2.3. Planning & Development Services shall review a completed Encroachment Agreement Request Form and based on review, the City shall either:
  - 6.2.3.1. Accept the Request: If the request is accepted, the City shall advise the Property Owner in writing that the Encroachment is approved; or
  - 6.2.3.2. Deny the Request: If the request is denied, the City will advise the Property Owner in writing that the Encroachment is not approved. The City shall stipulate that the Encroachment shall be removed at the Property Owner's expense within 30 days, or any longer period determined by the City in its sole and absolute decision.

### 6.3. Encroachment Categories

#### 6.3.1. Fence Encroachments

- 6.3.1.1. Minor Encroachment: Fence is pre-existing, encroaches by less than or equal to 0.20 metres and there is no record of complaints or issues related to the structure. If deemed acceptable, written authorization in the form of a letter will be provided to the Property Owner.
- 6.3.1.2. Moderate Encroachment: Fence is pre-existing, encroaches by more than 0.21 metres but not more than 1.0 metres and there is no record of complaints or issues related to the structure. If deemed acceptable, an Encroachment Agreement will be required with the Property Owner.
- 6.3.1.3. Major Encroachments: Fence Encroachments more than 1.0 metres are not permitted and must be removed at the Property Owner's expense. Fines may be applied if the Encroachment is not removed, as outlined in the Encroachment Bylaw.

- 6.3.1.4. Egregious Encroachment: Any Encroachment assessed by the CAO that exceeds the limits of Minor, Moderate or Major Encroachments. Fines may be applied if the Encroachment is not removed, as outlined in the Encroachment Bylaw.
- 6.3.2. Residential Building Encroachments
  - 6.3.2.1. Minor Encroachment: Building is pre-existing, encroaches by less than or equal to 0.20 metres and there is no record of complaints or issues related to the structure. If deemed acceptable, written authorization in the form of a letter will be provided to the Property Owner.
  - 6.3.2.2. Moderate Encroachment: Building is pre-existing, encroaches by more than 0.21 metres but not more than 1.0 metres and there is no record of complaints or issues related to the structure. If deemed acceptable, an Encroachment Agreement will be required with the Property Owner.
  - 6.3.2.3. Major Encroachment: Building is not pre-existing and Applicant is requesting to construct on City Land or building is pre-existing and encroaching by more than 1.0 metres. Fines may be applied if the Encroachment is not removed, as outlined in the Encroachment Bylaw.
  - 6.3.2.4. Egregious Encroachment: Any Encroachment assessed by the CAO that exceeds the limits of Minor, Moderate or Major Encroachments. Fines may be applied if the Encroachment is not removed, as outlined in the Encroachment Bylaw.
- 6.3.3. Commercial / Industrial Encroachments
  - 6.3.3.1. All Encroachments in commercial and industrial districts will be reviewed and assessed on its own merit.
- 6.3.4. Signs
  - 6.3.4.1. Signs projecting or placed onto City Lands are not considered Encroachments and may require a lease or License to Occupy Agreement from Planning & Development Services and/or a Development Permit to be issued.
- 6.4. Requesting an Encroachment Agreement
  - 6.4.1. The need for an Encroachment Agreement is typically identified through the preparation of a Certificate of Compliance but can be identified through other means. An Encroachment Agreement is not a Development Permit or Building Permit.
  - 6.4.2. Application
    - 6.4.2.1. All Encroachment Agreement requests submitted to the City must be accompanied by:
      - 6.4.2.1.1. A completed Encroachment Agreement Request form;

- 6.4.2.1.2. A copy of the Land Title(s), obtained not more than thirty (30) days prior to the application date;
  - 6.4.2.1.3. A Real Property Report showing the encroachment and dated not more than 1 year before the date of the application;
  - 6.4.2.1.4. Photographs of the encroaching feature(s);
  - 6.4.2.1.5. An application fee as described in the Planning & Development Fee Schedule. Additional fees may be required if the Encroachment is authorized to remain.
- 6.4.3. Review
- 6.4.3.1. The City may conduct an on-site inspection of the property, pursuant to the request for an Encroachment Agreement.
  - 6.4.3.2. An Encroachment Agreement request shall be reviewed by City departments and utility providers (if applicable) to provide direction as to whether the Encroachment Area may remain.
  - 6.4.3.3. An Encroachment Area onto an Easement that grants access to the City will be reviewed to determine whether the Encroachment Area shall be removed.
  - 6.4.3.4. If the Encroachment Area is permitted to remain, the Applicant is required to apply for a variance to the setback, where applicable, and as outlined in the Land Use Bylaw. This variance must be approved before an Encroachment Agreement is approved and drafted.
- 6.4.4. Approval
- 6.4.4.1. Once the Encroachment Agreement is approved, it is then forwarded to the Applicant or their representative for signature(s).
  - 6.4.4.2. Once signed, the Applicant returns the Encroachment Agreement to the City for signatures from the CAO and Mayor.
  - 6.4.4.3. The City will send the fully signed Encroachment Agreement to the Alberta Land Titles Office to be registered on the Land Title.
  - 6.4.4.4. The City shall provide a copy of the Land Title to the Applicant, evidencing that the Encroachment Agreement has been registered.
- 6.4.5. Refusal
- 6.4.5.1. The City may refuse, in writing, to authorize an Encroachment and/or issue an Encroachment Agreement that would misappropriate the lands for the exclusive use of the private property and deny the public the use and enjoyment of the lands.



- 6.4.5.2. The City may refuse, in writing, to authorize an Encroachment and/or issue an Encroachment Agreement when there are outstanding issues, orders or any other regulative infractions deemed related.
- 6.4.5.3. The City may refuse, in writing, to authorize an Encroachment and/or issue an Encroachment Agreement when in their opinion, there is insufficient information to determine if the buildings shown on the RPR are correct.
- 6.4.6. Remedies
  - 6.4.6.1. The Applicant can remove the Encroachment Area and restore the lands. They shall provide the City with a signed Affidavit or updated RPR evidencing the Encroachment has been removed.
  - 6.4.6.2. The Applicant or their representative may then request an updated Certificate of Compliance.
  - 6.4.6.3. The City cannot authorize an Encroachment onto a parcel registered as Reserve. The Applicant will be directed to remove the Encroachment Area and restore the lands.
- 6.5. Awareness of Encroachment / Triggers for Enforcement
  - 6.5.1. Certificate of Compliance Request
    - 6.5.1.1. An RPR is submitted to Planning & Development Services for review. It is determined that a structure(s) identified on the RPR is encroaching onto City Land.
  - 6.5.2. Complaints Received
    - 6.5.2.1. A member of the public submits a written complaint regarding a potential Encroachment. Complaints will be investigated by Planning & Development Services and Bylaw Services to determine if enforcement action is warranted.
  - 6.5.3. City Staff Observation
    - 6.5.3.1. Through regular City duties, staff notice a potential encroachment and bring it to the attention of Bylaw Services or Planning & Development Services to investigate.
  - 6.5.4. Investigation
    - 6.5.4.1. A background investigation will be undertaken by Planning & Development Services to determine if the Encroachment has been previously authorized.
      - 6.5.4.1.1. If the Encroachment has not been previously authorized, an investigation will be undertaken by Planning & Development

Services to determine if the Encroachment resulted from an error, or no utility right-of-way or Easement registered, road plan after the fact, permit issued, or similar situations.

6.5.4.1.2. Planning & Development Services will undertake a review of the Encroachment which may include a site inspection and consultation with City departments and utility providers to determine if the Encroachment should be authorized or removed.

### 6.5.5. Verification

6.5.5.1. At the discretion of Planning & Development Services, a survey or a Real Property Report may be undertaken to confirm the extent of the Encroachment. If the survey verifies that the Encroachment exists, the City may seek to recover the survey costs from the encroaching Property Owner.

### 6.5.6. Written Notice

6.5.6.1. Depending on the investigation, the Property Owner will be notified by mail advising them of the possible Encroachment(s) and requiring the Property Owner to either apply for an Encroachment Agreement or remove the Encroachment(s) within a certain timeframe. Property Owners who are requesting Encroachment approval into a City property or interest are required to submit a Real Property Report.

### 6.5.7. Enforcement

6.5.7.1. If the timeframe identified in the written notice to either remove the Encroachment(s) or to apply for an Encroachment Agreement has passed and the Property Owner has not made application for an Encroachment Agreement or removed the Encroachment(s), action will be taken under the Land Use Bylaw Enforcement Administrative Directive.

## 7. FEE SCHEDULE

7.1. All Encroachment authorization requests will require an application fee at the time of the request submission and may require additional fees if the encroachment is approved. See the Planning & Development Fee Schedule for the list of fees.

7.1.1. Approved Minor Encroachments will be provided a letter of authorization at no additional cost

7.1.2. Approved Moderate Encroachments will be provided an Encroachment Agreement, at an additional cost based on the equivalent municipal tax value and equivalent amortized land value of the encroaching area over the term of the agreement, with a minimum fee of \$2000.00 and a maximum fee of \$5000.00.



### 7.1.2.1. Example of Calculation with the Minimum Fee Applied

<b>Encroachment Agreement Fee Calculations</b>	
<b>Civic Address or Legal Description</b>	123 Example Street
<b>Municipal Tax Information</b>	
Current Year	2024
Mill Rate - (Residential or Non-Residential)	8.5573
<b>Year-Year Escalators</b>	
Estimated Annual Assessment Value Escalator	3.5%
Estimated Average Annual Mill Rate Increase	3.5%
<b>Land Amortization (yrs)</b>	20
<b>Main Parcel Information</b>	
Assessed Value (Land)	\$150,000
Gross Parcel Area (m2)	1,251
<b>Encroachment Area (m2)</b>	12.60
<b>Encroachment Agreement Term (yrs)</b>	10
<b>Fee Summary</b>	
Municipal Tax Value + Amortized Land Value	\$ 84.59 per sq. meter
Calculated Encroachment Value	\$ 1,065.84
Minimum Encroachment Value Fee	\$2,000.00
Maximum Encroachment Value Fee	\$5,000.00
Adjusted Encroachment Fee	\$ 2,000.00
<b>TOTAL</b>	<b>\$ 2,000.00</b>



### 7.1.2.2. Example of Calculation with the Minimum Fee Surpassed

<b>Encroachment Agreement Fee</b>	
<b>Civic Address or Legal Description</b>	456 Example Lane
<b>Municipal Tax Information</b>	
Current Year	2024
Mill Rate - (Residential or Non-Residential)	8.5573
<b>Year-Year Escalators</b>	
Estimated Annual Assessment Value Escalator	3.5%
Estimated Average Annual Mill Rate Increase	3.5%
<b>Land Amortization (yrs)</b>	20
<b>Main Parcel Information</b>	
Assessed Value (Land)	\$138,000
Gross Parcel Area (m2)	781
<b>Encroachment Area (m2)</b>	20.79
<b>Encroachment Agreement Term (yrs)</b>	10
<b>Fee Summary</b>	
Municipal Tax Value + Amortized Land Value	\$ 124.66 per sq. meter
Calculated Encroachment Value	\$ 2,591.62
Minimum Encroachment Value Fee	\$2,000.00
Maximum Encroachment Value Fee	\$5,000.00
Adjusted Encroachment Fee	\$ 2,591.62
<b>TOTAL</b>	<b>\$ 2,591.62</b>



### 8. END OF POLICY

Original Signed \_\_\_\_\_  
Signature of CAO

September 17, 2024 \_\_\_\_\_  
Date

### **POLICY RECORD**

#### **Approval and Amendment History**

Date of Approval	Description

#### **Review History**

Date of Policy Owner's Review	Description/Action Taken or Required