



TOWN OF HINTON

POLICY TITLE: ENCROACHMENTS

POLICY #: 048

EFFECTIVE DATE: OCTOBER 21, 2014

ADOPTED BY
COUNCIL ON: JULY 15, 1997, REVISED OCTOBER 21, 2014

1. **POLICY STATEMENT**

The Town of Hinton realizes Encroachments exist and will continue to be discovered, and has established this policy as a result.

The Town administers or owns a variety of parcels of land including roads and reserves. On behalf of the citizens of Hinton, the Town must ensure that Encroachments do not adversely affect these lands, the Town's ability to maintain effective services, or that Encroachments do not restrict public access and enjoyment of lands for public use. Identified owners of the Encroachment may be required to enter into an agreement or, alternatively, remove the Encroachment.

2. **REASON FOR POLICY**

2.1. This Encroachment Policy will assist the public and enable the Town to effectively manage Encroachments. It is intended to provide a consistent approach in processing applications, enforcing the policy, and protecting and indemnifying the Town wherever Encroachments have been identified.

3. **DEFINITIONS**

3.1. Council means the Municipal Council for the Town of Hinton.

3.2. 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 Municipal Lands and shall include but not be limited to the following:

- a) Buildings and all projections (including eaves, cantilevers, etc.) and siding;
- b) Sheds including those attached to a dwelling and/or a fence;
- c) Fences;
- d) Asphalt, concrete or brick sidewalks, curbs, parking pads, aprons or driveways;
- e) Structures (including decks, stairs, patios, balconies, etc.);
- f) Retaining walls;
- g) Swimming pools and hot tubs;
- h) Shrubs, trees or other organic landscape materials;

- i) Hard landscaping (including but not limited to retaining walls, curbs, structures, fire pits, and planters);
- j) Light standards; and
- k) Signs.

3.3. Encroachment Agreement means an agreement (including a Licence of Occupation) between the Landowner and the Town authorizing an Encroachment and shall, among other things, include:

- a) location and identification of the Encroachment;
- b) fees;
- c) term;
- d) termination notice;
- e) cost and liability for removal;
- f) indemnification of the Town, its agents or licensees; and
- g) a provision requiring removal following a minimum of 30 days notice by the Town.

3.4. Fence means any barrier, wall or structure such as a chain link fence, wooden fence, or brick or stucco wall, usually located along a property line.

3.5. Landowner means the owner of land adjacent to Municipal Lands who has required or may require an Encroachment Agreement for an Encroachment onto the said Municipal Lands.

3.6. Municipal Lands means collectively or individually, a Road, Reserve Parcel, or Town Owned Parcel.

3.7. Reserve Parcel means a parcel that is municipal reserve (MR), environmental reserve (ER), municipal and school reserve (MSR), community services reserve (CSR), or school reserve (SR), as defined in the *Municipal Government Act*.

3.8. Road means land 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, and includes a bridge forming part of a public road, any structure incidental to a public road, and may include walkways and lanes.

3.9. Town means the municipal corporation of the Town of Hinton.

3.10. Town Owned Parcel is any titled land the Town owns excluding a Reserve Parcel or Road.

3.11. Utility means any of the following:

- a) Systems for the distribution of gas, whether artificial or natural, electricity, telephone, cable television, and oil products;
- b) Facilities for 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, pumping stations, storm water ponds, and wetlands;
- e) Any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

4. **STANDARDS**

- 4.1. The Town recognizes the importance in assisting the public by effectively managing Encroachments.
- 4.2. The Town recognizes the importance of providing a consistent approach in processing applications for Encroachment authorizations.
- 4.3. The Town must ensure that Encroachments do not adversely affect the Town's ability to maintain services for public use by maintaining sufficient access to and ability to maintain the infrastructure located within Municipal Lands upon which Encroachments exist.
- 4.4. Encroachments which are not authorized by the Town shall be removed at the expense of the Landowner of the Encroachment.
- 4.5. The proliferation of Encroachments into Municipal Lands shall be discouraged.
- 4.6. In the case of existing Encroachments that cannot practically be removed, the Town may obtain compensation to offset the negative effects of an undesirable Encroachment
- 4.7. Formal authorization of Encroachments will be in the form of an Encroachment Agreement or Licence of Occupation to protect the Town and the public when Encroachments are identified on Municipal Lands.
- 4.8. The Town may consider selling or leasing Municipal Lands upon which an Encroachment is located, subject to complying with the *Municipal Government Act*.
- 4.9. This Policy applies to all Municipal Lands within the corporate boundaries of the Town of Hinton.

5. **RESPONSIBILITIES**

- 5.1. Council to:
 - a) Review and approve this policy and any amendments to it;
 - b) Review and approve fees and charges and any amendments to them relative to this policy;
 - c) Consider the allocation of resources for successful implementation of this policy in the annual budget process;
 - d) Consider any requests to enter the Municipal Reserve disposal or Environmental Reserve boundary adjustment processes;
 - e) Deal with those matters referred to it by this policy in any manner it believes are warranted; and
 - f) Act as a body of last resort for matters requiring variance or relaxation from this policy.
- 5.2. Director of Planning and Technical Services to:
 - a) Ensure implementation of this policy;
 - b) Make recommendations to Council regarding necessary policy amendments; and
 - c) Ensure employees are aware of this policy.
- 5.3. All relevant Planning and Technical Services Division employees:
 - a) Understand and adhere to this policy;

- b) To receive, review, and respond to all requests for Encroachments onto Municipal Lands;
- c) To prepare and have executed Encroachment Agreements and licenses of occupation;
- d) To advise Council on matters related to the disposal of Municipal Reserve or boundary adjustment of Environmental Reserve;
- e) To advise any applicants of the process required for obtaining Town consent for Encroachment; and
- f) Carry out this policy.

6. **GENERAL PROVISIONS**

- 6.1. The Planning and Technical Services Division is responsible for the review, administration, circulation, and coordination of all Encroachment Agreements.
- 6.2. Unless the Town authorizes an Encroachment, the Landowner, shall remove the Encroachment from the affected Municipal Lands, within 30 days of receiving notice to do so or as reasonably specified by the Town. All work conducted in removing an Encroachment shall be at the cost of the Landowner.
- 6.3. Encroachments into Municipal Lands that are designated as or are part of an emergency access shall be removed from the affected Municipal Lands at the cost of the Landowner as soon as practically possible, but no longer than within 30 days of receiving notice to do so.
- 6.4. An Encroachment Agreement between the Town and the Landowner shall be registered by caveat on the title of the Landowner's land.
- 6.5. An Encroachment Agreement does not release a Landowner from the responsibility to comply with all applicable federal, provincial and municipal statutes, regulations, orders, by-laws and policies.
- 6.6. All expenses, costs, liabilities, or other risk associated with an authorized Encroachment shall be borne by the Landowner.
- 6.7. An Encroachment once authorized by the Town may continue to be used, but the Encroachment shall not be added to, rebuilt or structurally altered, except:
 - a) as may be necessary to remove the Encroachment; or
 - b) as may be necessary for the routine maintenance of the Encroachment.
- 6.8. If an Encroachment or the structure benefiting from the Encroachment is damaged or destroyed to the extent of more than 75% of the replacement value of the Encroachment or such structure, the Encroachment shall not be repaired or reconstructed and shall be removed from the Municipal Lands unless the repair or reconstruction has been authorized by the Town.
- 6.9. The Town will respond to all Encroachment complaints and will apply this policy when Encroachments are identified through normal management of Municipal Lands.
- 6.10. Existing Encroachments authorized by Licenses of Occupation, Encroachment Agreements, or any other existing agreement with the Town authorizing an Encroachment

shall be deemed to be an authorized Encroachment subject to the terms of the existing agreement.

- 6.11. An Encroachment shall not interfere with the Town's need to access the Municipal Lands or to perform any and all functions necessary to maintain, repair, manage, construct or otherwise utilize any infrastructure on Municipal Lands.
- 6.12. An Encroachment Agreement will not be granted if, in the opinion of the Town, it poses a safety hazard and the Encroachment shall be removed.
- 6.13. Notwithstanding any other provision of this policy and procedures, the Town reserves the right to limit the term of an Encroachment Agreement, or provide for the termination of an Encroachment Agreement, in the event that the Encroachment could be affected by future plans for Utilities, Road widening, or other requirements.
- 6.14. Notwithstanding any of the above, in the event that an Encroachment poses a clear and present danger to the public as determined by the Town, the Encroachment shall be removed immediately by the Landowner and at the sole cost of the Landowner. Should the Landowner, for whatever reason, be unable or unwilling to remove the Encroachment, then the Town shall immediately remove it and all costs of the removal incurred by the Town shall be borne by the Landowner.

7. ENCROACHMENTS ONTO A ROAD

- 7.1. An Encroachment as defined in Schedule "A" will not require an Encroachment Agreement.
- 7.2. If an Encroachment does not meet the provisions of Schedule "A", the Landowner may elect to apply for an Encroachment Agreement authorizing the Encroachment, or shall remove the Encroachment.
- 7.3. Applications for Encroachment Agreements will be considered by the Town, and if deemed acceptable, an Encroachment Agreement will be granted in accordance with Schedule "B".
- 7.4. Notwithstanding the above, if deemed acceptable and feasible by the Town, the Landowner may apply to purchase a portion, or all, of the Road, so as to remedy the Encroachment. This option is subject to, but not limited to, the following:
 - a) Circulation to and approval from affected Town departments;
 - b) An approved Road Closure Bylaw (subject to Council and Alberta Transportation approval);
 - c) An approved land sale (may be subject to Council approval);
 - d) An approved subdivision (if applicable);
 - e) Consolidation of the "closed road" with the Landowner's property; and
 - f) All associated costs shall be borne by the Landowner including but not limited to: application fees, surveying costs, professional fees and registration fees.

8. ENCROACHMENTS ONTO TOWN OWNED PARCELS

- 8.1. An Encroachment as defined in Schedule "A" will not require an Encroachment Agreement.

- 8.2. If an Encroachment does not meet the provisions of Schedule "A", the Landowner may elect to apply for an Encroachment Agreement authorizing the Encroachment, or shall remove the Encroachment.
- 8.3. Notwithstanding the above, if deemed acceptable and feasible by the Town, the Landowner may apply to purchase or lease a portion, or all, of the Town Owned Parcel, so as to remedy the Encroachment. This option is subject to, but not limited to, the following:
 - a) Circulation to and approval from affected Town departments;
 - b) An approved land sale or lease (may be subject to Council approval);
 - c) An approved subdivision (if applicable);
 - d) If a purchase, the lands shall be consolidated with the Landowner's property; and
 - e) All associated costs shall be borne by the Landowner including but not limited to: application fees, surveying costs, professional fees and registration fees.

9. ENCROACHMENTS ONTO RESERVE PARCELS

- 9.1. Where an Encroachment extends into a Reserve Parcel by 0.3 m or less and covers an area no larger than 15 m², the Landowner may elect to enter into a License of Occupation agreement authorizing the Encroachment, or shall remove the Encroachment.
- 9.2. Where an Encroachment extends into a Reserve Parcel by more than 0.3 m or covers an area larger than 15 m², the Landowner shall remove the Encroachment as directed by the Town.
- 9.3. If a Landowner objects to entering into a License of Occupation or to the removal, the Landowner may apply to Council for disposal of the Reserve affected by the Encroachment (Section 70 and 674 of Municipal Government Act) or in the case of Environmental Reserve (ER), for boundary rectification (Section 676 of the Municipal Government Act).
 - a) The disposal of any interest in Municipal Reserve (MR) and Environmental Reserve (ER) parcels is subject to a public hearing of Council.
 - b) The disposal of any interest in School Reserve (SR) and Municipal and School Reserve (MSR) parcels is subject to review by the Town and School Authority and a subsequent public hearing of Council.
 - c) All associated costs shall be borne by the Landowner including but not limited to: application fees, surveying costs, professional fees and registration fees.

10. ENFORCEMENT

- 10.1. An Encroachment onto Municipal Lands is enforced by the designated officers under the jurisdiction of relevant Town bylaws and Provincial Statutes.

11. FEES

- 11.1. Fee Schedule as per Planning and Technical Services General Service Fees Bylaw 1050 and any amendments thereto, or a replacement bylaw, as approved by Council.
- 11.2. Any additional costs required in order to facilitate an Encroachment, including but not limited to a road closure, subdivision application, or reserve disposal, shall be borne by the Landowner.

- 11.3. Any costs of utility relocation or reconstruction required to facilitate an Encroachment shall be the responsibility of the Landowner.

SCHEDULE "A"

Encroachments onto Municipal Lands that DO NOT Require an Encroachment Agreement

1. Structures which provide direct access to a dwelling, including:
 - a. driveways (of any material)
 - b. sidewalks
2. Driveways which access lanes:
 - a. that are constructed of gravel, shale or other like material
 - b. that are hard surfaced and that encroach into a hard surfaced (asphalt or concrete) lane
3. Fences:
 - a. that encroach not more than 0.2 m and that enclose an area not more than 15 m²
 - b. developer fences required under development agreements
4. Retaining walls or curbs:
 - a. not more than 0.2 m in height or that encroach not more than 0.2 m
5. Non-permanent surface improvements not more than 0.2 m in height, including:
 - a. movable planters including any movable border material (i.e. plastic, concrete blocks, timber sections)
 - b. surface level rocks
 - c. interlocking landscaping brick
6. Any encroachment constructed for valid municipal purposes by the Town or its agents (i.e. bollards, rock barriers (boulders), sound barriers, developer fences, subdivision entrance signs, guard rails, etc.)

SCHEDULE “B”

Encroachments onto Municipal Lands that **DO** Require an Encroachment Agreement

1. Any Encroachments that **do not** comply with the provisions set out in Schedule “A” require an Encroachment Agreement or Licence of Occupation in order to remain, subject to the provisions of this policy and procedures.
2. If the Landowner elects to apply for an Encroachment Agreement, the Landowner will be asked to provide a complete application including:
 - a. a copy (preferably an original) of a Real Property Report detailing the property and the extent of the encroachment;
 - b. the application fee; and
 - c. an application letter.
3. Once a complete application is received, it will be reviewed by the Planning and Technical Services Division and any affected Town departments, and if deemed acceptable, an Encroachment Agreement will be issued for execution by the Landowner.
4. Upon receipt of three copies of the fully executed Encroachment Agreement, the Town will register the Encroachment Agreement on the title to the Landowner’s property and return a fully executed copy to the Landowner (or their agent).
5. Once an Encroachment Agreement has been registered on the Landowner’s property, the Encroachment may remain on the Municipal Lands, subject to the provisions of the Encroachment Agreement and this policy and procedures.
6. Each subsequent Landowner purchasing the property must also enter into an Encroachment Agreement.