

Function: Infrastructure & Planning - 04
Department: Planning & Development - 030
Policy No.: 001



Encroachment Agreement Policy

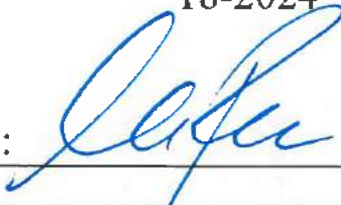
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CAO Signature:



Purpose: This policy will assist the public and enable the Municipality to manage Encroachments affectively. This policy is intended to provide a more consistent approach in processing applications, enforcing the policy and protecting and indemnifying the Municipality wherever Encroachments have been identified.

Definitions:

Caveat — a formation notification registered on the title of a parcel of land,

Council — the Council for the Municipality of Lac Ste. Anne County,

Development Officer — a person appointed as Development Officer (or their designate) pursuant to the Land Use Bylaw,

Easement — 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, identified by a registered plan or by description and documented by a registered caveat or easement agreement at the Alberta Land Titles Office.

Encroachment — anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (excluding sidewalks, or any other municipal improvement required and

owned by the Municipality), that extends on, over or under municipal lands and shall include but not limited to the following:

- a. buildings and all projections (including eaves, footings, foundations, weeping tiles, 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 landscaping materials planted in Reserve or Municipally owned property;
- i. hard landscaping (including asphalt, concrete paving stones, retaining walls, planters and structures);
- j. light standards;
- k. permanent signs.

Encroachment Agreement — an agreement between the applicant and the Municipality authorizing an Encroachment and shall, among other things, include but not be limited to:

- a. The location and identification of the Encroachment;
- b. Fees;
- c. The owner's responsibilities to maintain the Encroachment;
- d. Terms or conditions under which the agreement is terminated;
- e. Cost and liability for removal; and
- f. Indemnification of the Municipality, its agents and licensees.

Fence — any enclosing barrier, wall, or structure such as a chain link fence, wooden fence, metal fence, or brick/stucco wall, usually located along the property line.

Land Use Bylaw — the Bylaw that has been adopted by the Municipality for the purpose of prohibiting or regulating and controlling the use and development of land and buildings within the Municipality of Lac Ste. Anne County.

Municipal Lands - collectively or individually, roads, easements, reserve parcels, and Municipally-owned parcels.

Municipality — the municipal corporation of the Municipality of Lac Ste. Anne County, or the area contained within the Municipality boundaries, as the context requires.

Owner — 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 a road, reserve parcel and Municipality-owned parcel, "owner" shall mean the owner of the adjacent land which has an Encroachment into the road, reserve, or Municipally-owned parcel.

Real Property Report (RPR) — a legal document prepared by an Alberta Land Surveyor that clearly illustrates the location of significant visible building(s) and or structures relative to the property boundaries;

Reserve — all Municipal Reserves, Environmental Reserves, Municipal and School Reserves as defined in Section 664-666 of the *Municipal Government Act*, or a Public Park;

Road — 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 and any structure incidental to a public road.

POLICY STATEMENTS

Procedure:

1. Unless an Encroachment is authorized by the Municipality pursuant to **Schedule A** of this policy, the Encroachment shall be removed from the affected municipal lands.
2. Where an Encroachment exists without Municipality approval, the owner shall be required to remove the Encroachment at his/her own expense, or seek permission from the Municipality for the Encroachment to remain.
3. An Encroachment Agreement between the Municipality and Owner shall be registered at the Alberta Land Titles Office by caveat, subject to the Owner paying the applicable fees set out in this policy.
4. All requests for an Encroachment Agreement submitted to the Municipality must be accompanied by:
 - a. A complete drafted Encroachment Agreement;

- b. An RPR no older than two (2) years showing the Encroachment; and
- c. An application fee as described in this policy.

Encroachment Process:

1. An application for an Encroachment Agreement must be made for all Encroachments which will be considered on its own merit in consultation with other Municipality Departments.
2. If an Encroachment Agreement is deemed acceptable by County Council, a caveat will be registered against the Owner's land and the Municipality-owned parcel.
3. The Owner shall remove the Encroachment from the Municipality lands if the Encroachment has not been authorized within 30 days of receiving a notice of refusal.
4. Where an Encroachment has been authorized by the Municipality, the Owner(s) shall execute the Encroachment Agreement in a timeframe specified by the Municipality, or the Encroachment shall be removed from the municipal lands within 30 days of receiving notice to do so.
5. The term of the Encroachment agreement shall be for a period no longer than 89 years or the effective life of the structure whichever is shorter. Further, the Encroachment agreement shall stipulate:
 - a. That the non-conformity may not be enlarged, structurally altered, added to, rebuilt or extended beyond the bounds of the current use except as follows:
 - i. to make the structure a conforming building
 - ii. for routine maintenance of the building
 - iii. such alterations as may be authorized by the Municipal development authority
 - iv. That the non-conformity may not be transferred to any other portion of the building
 - v. If the non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building is not to be repaired or rebuilt except in accordance with the Municipal Land Use Bylaw.
 - b. That if the use of the building is discontinued for a period of 6 consecutive months or more any future use of the land or building

must thereafter be in conformity with the land use bylaw then in effect.

6. An authorized Encroachment does not relieve an Owner from the responsibility to comply with all applicable federal, provincial, and municipal statutes, regulations, orders, bylaws, and policies.
7. Notwithstanding any other provisions of this policy, the Municipality reserves the right to limit the terms of an Encroachment Agreement or other authorization or provide for the termination of an Encroachment Agreement or other authorization in the event that the Encroachment could be affected by future plans for utilities, road widening, or other requirements.
8. All expenses, costs, liabilities, or other risk associated with an authorized Encroachment shall be borne by the Owner(s).

Appeals

No appeals of Council's decisions will be allowed, as all decisions are final and binding.

Enforcement

1. Unless an Encroachment is authorized by the Municipality, the Encroachment shall be removed from the affected municipal lands within 30 days of receiving notice to do so. All work conducted to remove an Encroachment shall be at the sole cost of the Owner(s).
2. If the Owner(s) refuses to remove the Encroachment or fails to apply for authorization under this policy, the Municipality may take action to remove the Encroachment and seek reimbursement from the Owner(s) for all such costs in accordance with the applicable Municipal bylaws and policies and in accordance with the Municipal Government Act.

Application Fees and Encroachment Fees

3. Application Fee:
 - a. For an application for authorization of an Encroachment where it is necessary to circulate the application to Municipal departments and Utilities: \$400.00.
 - b. Encroachment Fee: \$500.00 one-time fee plus any additional legal costs.
 - c. The fee schedule may be revised from time to time with the approval of Council.

SCHEDULE A

PERMITTED ENCROACHMENTS ONTO A STREET

1. Structures which provide direct access to a dwelling compliant with Lac Ste. Anne County land use policies, practices and regulations, including:
 - a. front driveways,
 - b. sidewalks,
 - c. special needs access (ramps, elevators, fire escapes, etc.),
 - d. steps that provide access to a residential dwelling (excluding retaining walls or landscape features that are in the opinion of the Municipality considered to be features not directly benefiting the access),
2. Driveways which access lanes:
 - a. which are constructed of asphalt, gravel, shale or concrete or other like material and which encroach not more than 0.3 metres into a gravel lane,
 - b. which are hard-surfaced and which encroach into a hard surfaced (asphalt or concrete) lane;
3. Fences:
 - a. encroaching not more than 0.3 metres where the fence creates an enclosure, provided that the total area of Encroachment from any property may not exceed 4.6 m²,
 - b. encroaching to the back of the sidewalk or to 1.0 metres from the curb (if there is no sidewalk) where the fence is a linear projection of a fence on the adjacent private property,
 - c. developer fences required under development agreements running parallel to pathways (which run over a property line) may exceed 0.3 metres subject to minimum access requirements;
4. Portable sheds and other accessory buildings and structures:
 - a. under 10m² and encroaching not more than 0.3 metres;
 - b. not more than 0.5 metres in height and where not located within 2.0m to above ground utility surface facilities unless site specific factors will allow for a greater height;

5. Non-permanent surface improvements including:
 - a. movable planters including any movable border material (e.g., plastic, concrete, timber sections under 0.2 metres in height);
 - b. natural landscaping including sod, seed and planted landscaping such as shrubs and other low level landscaping but excluding trees and other deep rooted vegetation;
 - c. surface level rocks;
 - d. surface interlocking blocks;

6. Other:
 - a. any Encroachment constructed for municipal purposes by the municipality or its agents (i.e., bollards, sound barriers, developer fences, subdivision entrance signs, guard rails, municipal animal-proof garbage containers and concrete pads etc.)

PERMITTED ENCROACHMENTS INTO UTILITY RIGHTS OF WAY, CORRIDORS AND EASEMENTS

1. Surface vehicle driveways and parking areas;
2. Surface pedestrian sidewalks and walkways;
3. Sod, seed and planted landscaping such as shrubs and other low level landscaping but excluding trees and other deep rooted vegetation;
4. Fences running through a utility right-of-way bisected by a property line;
5. Portable sheds and other portable accessory buildings (not on footings) under ten (10) square metres and encroaching not more than 0.3 metres;
6. Not more than 0.5 metres in height and where not located within 2.0m to above ground utility surface facilities unless site specific factors will allow for a greater height;
7. Any item constructed for municipal purposes for or by the Municipality.
8. Non-permanent surface improvements including:
 - a. movable landscaping planters including any movable border material (e.g., plastic, concrete, timber sections under 0.3 metres in height);
 - b. surface level landscape rocks not more than 0.5 metres in height;

- c. municipal animal-proof garbage containers and concrete pads;
- d. any item constructed for municipal purposes for or by the Municipality.

GUIDELINES:

1. Real Property Report (RPR) LESS THAN ONE YEAR OLD
 - a. If less than one year old, the request must be accompanied by the applicable fee and two (2) original RPR's.
 - b. One Original will be returned to the requester
 - c. The other RPR will remain in municipal files
 - d. Require one CAD file of the RPR to be submitted by the surveyor

2. Real Property Report (RPR) MORE THAN ONE YEAR OLD
 - a. The request must be accompanied by the applicable fee;
 - b. A statutory declaration is required;
 - c. Two (2) original RPR's;
 - d. One Original will be returned to the requester;
 - e. The other RPR will remain in municipal files;
 - f. An inspection fee will be required in addition to the application fee for the purposes of conducting an inspection of the site where the subject land is less than 4.04 ha. in area. This fee is outlined in the Planning and Development Fee Bylaw;
 - g. Require one CAD file of the RPR to be submitted by the surveyor.

3. Real Property Report (RPR) COPIES NOT REQUIRED
 - a. In cases where a statutory declaration states that the RPR remains a current and accurate document, original copies of the RPR may not be required where the County already has an original copy in its possession from an earlier request.

4. Service Delivery
 - a. Rates for compliance requests are as described in the Lac Ste. Anne County Master Rates and Fees Bylaw;
 - b. Compliance letters will not be faxed to the requester until the necessary documentation and fees have been received by this Office;
 - c. Where originals of RPR are forwarded to this Office, one original shall remain in the possession of the County. Additional originals shall be returned to the applicant.