



# Encroachment Agreement

<b>Procedure No.:</b> PLN-3	<b>Council Resolution No.:</b> N/A
<b>Department:</b> Planning and Economic Development	<b>Authority:</b> CAO
<b>Effective Date:</b> April 25, 2016	<b>Revision Date:</b> September 12, 2022 Jan13, 2020
<b>Review Date:</b> September 12, 2025	<b>Repealed Date:</b> N/A
<b>Supersedes:</b> N/A	
<b>Related Policy No.:</b> PLN-3	
<b>Related Policy Name:</b> Encroachment Agreement	

## 1.0 PURPOSE

1.1 To outline procedures used to implement the Encroachment Agreement Policy.

## 2.0 OPERATING GUIDELINES

2.1 Unless an encroachment is authorized by the municipality, the encroachment shall be removed from the affected municipal lands or road. The Owner shall make an application for or remove the encroachment within 30 days of receiving notice to do so. If the owner does not make an application for or remove the encroachment within the 30 days of notice the Town shall begin enforcement action. All work conducted in applying for or removing an encroachment shall be at the cost of the Owner.

2.2 Except as otherwise stated in this Procedure, where an encroachment has been authorized by the Town, an Owner shall, if required by the Town, execute an Encroachment Agreement prepared and delivered by the Owner's solicitor and pay any applicable fees, or the Encroachment shall be removed from the Municipal Lands.

2.3 Once authorized, an encroachment may continue to be used however, it shall not be added to, rebuilt, or structurally altered except:

2.3.1 As may be necessary to remove the encroachment, or

2.3.2 As may be necessary for the routine maintenance of the encroachment.

2.4 If an encroachment is damaged or destroyed, the encroachment shall not be repaired or rebuilt if the cost to do so is greater than 75% of the replacement value



of the encroaching structure, unless the repair or reconstruction has been authorized by the Town.

- 2.5 Authorized encroachments do not relieve an Owner from the requirement to comply with all applicable federal, provincial, and municipal statutes, regulations, orders, by-laws, and policies. All costs, expenses, liabilities or other risk associated with an authorized encroachment shall be endured by the Owner.
- 2.6 An Encroachment Agreement between the municipality and the Owner shall be registered at the South Alberta Land Titles Office by caveat, subject to the Owner paying the applicable fees.
- 2.7 Any additional costs required to facilitate an encroachment, including but not limited to a road closure or subdivision application, shall be borne by the Owner.
- 2.8 No encroachments into an emergency access easement shall be permitted. All such encroachments shall be removed immediately by the Owner at his/her expense. If the Owner is unwilling or unable to remove the encroachment the Town shall immediately remove the encroachment and all costs associated with the removal incurred by the Town shall be paid by the Owner.
- 2.9 Utilities located within municipal lands or roads authorized by the Town will not be considered as an encroachment.
- 2.10 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 Owner. Should the Owner, 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 assumed by the Owner.
- 2.11 An encroachment shall not interfere with the Town's or other utility operator's need to access the easement.
- 2.12 Encroachments which are minor in nature, as set out in attached Schedule "A", do not require an encroachment agreement and the Owner may request a Letter of Consent if they so choose.
- 2.13 Encroachments into easements not in Schedule "A" will be reviewed by the CAO for their possible endorsement and forwarded to Council, if deemed necessary by the CAO at their sole discretion.
- 2.14 Encroachments into municipal lands and/or roads that encroach less than 0.3 meters will be deemed as minor.

### **3.0 DEFINITIONS**

- 3.1 Council - The Municipal Council of the Town of Taber.
- 3.2 Easement - Any right-of-way for the passage 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 Southern Alberta Land Titles Office.

- 3.3 Encroachment - Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (excluding sound reduction structures or fences as required by the Town), that extends on, over, or under municipal lands or roads and shall include but is not limited to:
- 3.3.1 Buildings and all projections (including eaves, cantilevers, etc.) and siding;
  - 3.3.2 Sheds (including those attached to a dwelling and/or fence);
  - 3.3.3 Fences;
  - 3.3.4 Sidewalks, curbs, parking pads, aprons or driveways;
  - 3.3.5 Structures (including decks, stairs patios, etc.);
  - 3.3.6 Extension of adjacent lands by fill, berms, building projections or cantilevers;
  - 3.3.7 Retaining walls;
  - 3.3.8 Swimming pools and hot tubs;
  - 3.3.9 Shrubs, trees, or other organic landscape materials planted in municipal lands;
  - 3.3.10 Hard landscaping (including but not limited to, retaining walls, structures, fire pits, planters), or;
  - 3.3.11 Signs.
- 3.4 Encroachment Agreement - An agreement between the Owner and the Town authorizing an encroachment and shall, among other things, include:
- 3.4.1 Location and identification of the encroachment;
  - 3.4.2 Fees;
  - 3.4.3 Term;
  - 3.4.4 Termination notice;
  - 3.4.5 Cost and liability for removal; or
  - 3.4.6 Indemnification of the Town, its agents, or licensees
- 3.5 Fence - Any enclosing barrier, wall or structure such as a chain link fence, wooden fence, or brick or stucco wall, usually located along a property line.



- 3.6 Letter of Consent - A letter consenting that the Chief Administration Officer, or his/her designate, determined, at his/her sole discretion, an encroachment is minor in nature such that an Encroachment Agreement is not required. This does not restrict or limit the Town's rights to access utilities and does not relieve the Owner from any liability arising from the encroachment.
- 3.7 Municipal Lands - Collectively or individually, easements, reserve parcels, and Town-owned parcels.
- 3.8 Owner - The person or persons registered under the Land Titles Act as the owner of the fee simple estate in the land. In context of municipal lands, "owner" shall mean the owner of adjacent land which has an encroachment into the municipal lands.
- 3.9 Reserve Parcel - A parcel that is municipal reserve (MR), municipal and school reserve (MSR), environmental reserve (ER), school reserve (SR), conservation reserve (CR) or Public Utility Lot (PUL) as defined in the Municipal Government Act.
- 3.10 Road - Land shown as a road on a plan of survey that had 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.
- 3.11 Town - The municipal corporation of the Town of Taber, or the area contained within the Town boundaries, as the context requires.
- 3.12 Town-Owned Parcels - Any land the Town of Taber is registered to be the owner of, not including reserve parcels or easements.
- 3.13 Utilities - Any lines, systems, infrastructure or other facilities relating to any one or more of the following:
- 3.13.1 The production or distribution of gas or oil products, whether artificial or natural;
  - 3.13.2 The distribution or transmission of electricity, telephone, cable television, or telecommunications;
  - 3.13.3 The storage, transmission, treatment, distribution or supply of water;
  - 3.13.4 The collection, treatment, movement, or disposal of sanitary sewage, including but not limited to pipes, force mains, and pumping stations;
  - 3.13.5 The drainage, collection, treatment, movement, or disposal of storm sewer water, including but not limited to, collection devices, drainage swales, pipes, pumping stations, storm water ponds and wetlands.
  - 3.13.6 Or the applicable utility departments of the Town or other owners of utilities, as the context requires.



The definition of all terms contained with-in this procedure are the same as those defined within the Town of Taber Land Use Bylaw, as amended from time to time, unless otherwise listed above.

#### **4.0 RESPONSIBILITIES**

##### **4.1 Council:**

- 4.1.1 Review and consider adoption of the policy and any recommended amendments;
- 4.1.2 Authorize encroachments as required by the Chief Administrative Officer

##### **4.2 Administrative Officer (CAO):**

- 4.2.1 Implement the policy;
- 4.2.2 Authorize encroachments which would reasonably be deemed to have minimal or no impact on the Town and its operations;
- 4.2.3 Forward encroachment applications to Council at the CAOs discretion where the encroachment may be impactful to Town operations.

##### **4.3 The Planning and Economic Development Department:**

- 4.3.1 Make the policy available to the public;
- 4.3.2 Make recommendations regarding the policy and amendments;
- 4.3.3 Forward agreements and consult with affected Town departments to decide on the acceptability of an encroachment;
- 4.3.4 Maintain an inventory of all documentation relating to encroachments evaluated;
- 4.3.5 Execute all necessary legal documentation to allow the encroachment;
- 4.3.6 Track to ensure applicants register documentation with the Land Titles Office;
- 4.3.7 Advise applicants on the process of evaluating encroachments.

##### **4.4 Engineering and Public Works Department:**

- 4.4.1 Review encroachment applications to ensure encroachments will not interfere with infrastructure or roadways.

##### **4.5 By-law Enforcement:**

- 4.5.1 Enforce encroachment related by-law offences.

#### **5.0 ENFORCEMENT**

- 5.1 The Town will notify a property owner that an encroachment has been identified on municipal lands and/or a road and that they are to make an Encroachment



Agreement application and submit an Encroachment Agreement should the Owner wish the encroachment to remain.

5.2 Investigation:

5.2.1 A background investigation will be undertaken to determine if the encroachment resulted from an error, no easement registered, road plan after the fact, permit issued, etc;

5.2.2 Significance of the encroachment will be determined to see if it presents a safety hazard and if the encroachment should be authorized or removed.

5.3 If after the initial 30 days set out in section 5.1, the Owner has not made application for an Encroachment Agreement or removed the encroachment, written notice will be sent to the Owner. A second letter will indicate that, if the problem is not rectified within another 30 days, the situation will be referred to the Town's solicitor and/or the Bylaw Enforcement Officer for immediate action.

5.4 Any costs of utility relocation or reconstruction required to facilitate an encroachment shall be the responsibility of the Owner. If the Owner refuses to remove the encroachment or fails to apply for the authorization, the Town may take action to relocate the utility and seek reimbursement from the Owner for all associated costs in accordance with the applicable bylaws and policies, and the Municipal Government Act.

## 6.0 APPLICATION

6.1 The following Information should be submitted as the Encroachment Agreement Application. If any of these pieces are missing the application will not be reviewed:

6.1.1 A current copy of the Certificate of Title -Obtained through an Alberta Registries Agent. The legal description of the property will be required;

6.1.2 A Real Property Report - An original or very clear copy (not reduced). This can be obtained through any Alberta Land Surveyor;

6.1.3 A Letter of Intent - The letter should explain the circumstances of the encroachment. It should reference the property's address and legal description;

6.1.4 The Application Fee - As set out in the Town of Taber Fee Bylaw;

6.1.5 Photographs - Photos of the encroachment should be provided to give an idea of the area in question. Photos should also clearly show the encroachment.

## 7.0 REVIEW PROCESS

7.1 For minor encroachments:

7.1.1 The CAO, or his/her designate, will determine, at his/her sole discretion, if an encroachment is minor in nature such that an Encroachment Agreement is not required, as set out in Schedule "A".



- 7.1.2 The Planning and Development department will provide a Letter of Consent when requested.
- 7.2 For encroachments into easements:
  - 7.2.1 The Planning and Development department will be responsible for the review, administration, circulation, and coordination for all applications to the affected departments and utilities;
  - 7.2.2 The CAO will approve or reject the application;
  - 7.2.3 The Planning and Development department will advise and make recommendations to the CAO when requested;
  - 7.2.4 The applicant will be responsible for having a legal Encroachment Agreement drawn up and signed by the CAO.
- 7.3 For encroachments into Municipal Reserves and Town-owned Land and roads:
  - 7.3.1 The Planning and Development department will be responsible for the review, administration, circulation, and coordination of all applications to the affected departments and utilities;
  - 7.3.2 All encroachments, except for those listed in Schedule “A”, must be considered by the CAO who will decide on the encroachment or have the encroachment brought to Council for recommendation;
  - 7.3.3 The Planning and Development department will advise and make recommendations to the CAO and Council when requested;
  - 7.3.4 The applicant will be responsible for having a legal Encroachment Agreement drawn up and signed by the CAO.

**8.0 ATTACHMENTS**

- 8.1 Schedule “A” – Encroachments Not Requiring an Encroachment Agreement.



October 7, 2022

\_\_\_\_\_  
CHIEF ADMINISTRATIVE OFFICER

\_\_\_\_\_  
DATE



Schedule "A"  
Encroachments Not Requiring an Encroachment Agreement

**1.0 ENCHROACHMENTS INTO EASEMENTS OR RIGHT OF WAYS**

- 1.1 Any encroachment into easements which are less than 0.05 meters.
- 1.2 Structures providing direct access to a building or residential dwelling:
  - 1.2.1 Driveways, which cross over and do not run parallel to an easement;
  - 1.2.2 Sidewalks;
  - 1.2.3 Special needs access (ramps, elevators, fire escapes, etc.).
- 1.3 Fence sections that span an easement or encroach less than 0.3 meters into an easement.
- 1.4 Fences that project across or through overland drainage right-of-way,
- 1.5 Portable sheds under 10 sq. m. that are not constructed on a permanent foundation and are not connected to utility services. If necessary, these sheds may be required to be moved to adhere to all setbacks required by the Land Use Bylaw.
- 1.6 Eaves encroaching less than 0.1 meters into an easement.

**2.0 ENCROACHMENTS**

- 2.1 Signs and canopies complying with applicable bylaws.
- 2.2 Concrete garage aprons or sidewalks encroaching less than 0.3 meters into lanes.
- 2.3 Non-permanent surface improvements:
  - 2.3.1 Landscaping including trees and shrubbery, interlocking bricks, gravel, shale, etc.;
  - 2.3.2 Surface level rocks, moveable planters, and moveable border, as long as they do not exceed 0.2 meters in height; and
  - 2.3.3 Irrigation systems.
- 2.4 Any encroachment constructed for valid municipal purpose by the Town or its agents (sound barriers, developer fences, guard rails, subdivision entrance signs, etc.).

