



Lethbridge County Policy Handbook

EFFECTIVE: December 19, 2013 **SECTION:** 100 NO. 163 Page 1 of 8

APPROVED BY: County Council **SUBJECT:** Encroachment Policy

REVISED DATE:

Policy Statement

The County of Lethbridge recognizes that encroachment exists within the County. The County has developed this policy to ensure that encroachment applications are evaluated in a consistent manner.

Purpose

Encroachment applications will be reviewed on their own merits and the County must ensure that the encroachment does not adversely affect the County's or a utility operator's ability to maintain services for public use.

Authorization

Section 61 of the *Municipal Government Act* authorizes a municipality to grant rights over its property as follows:

- 61(1) A municipality may grant rights, exclusive or otherwise, with respect to its property, including property under the direction, control, and management of the municipality;
- (2) A municipality may charge fees, tolls, and charges for the use of its property, including property under the direction, control, and management of the municipality.

Section 651.2 authorizes a municipality to register a caveat with respect to encroachments over roads as follows:

- 651.2(2) Despite the *Land Titles Act* or any other enactment, a municipality may register a caveat under the *Land Titles Act* in respect of any encroachment agreement entered into by the municipality with the registered owner of a parcel of land that adjoins a road that is under the direction, control, and management of the municipality.

The County hereby delegates the authority to implement this policy to the Chief Administrative Officer or designate.



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Definitions

- a) Caveat – a formation notification registered on the title of a parcel of land.
- b) County – the municipal corporation of the County of Lethbridge, or the area contained within the County boundaries, as the context requires.
- c) Council – the Council for the County of Lethbridge.
- d) Development Officer – a person appointed as Development Officer (or their designate) pursuant to the Land Use Bylaw.
- e) 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 – Calgary.
- f) 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, fences, or any other municipal improvement required and owned by the County), that extends on, over or under municipal lands and shall include but not limited to the following:
 - i. Buildings and all projections (including eaves, footings, foundations, weeping tiles, cantilevers, etc.) and siding;
 - ii. Sheds including those attached to a dwelling and/or a fence;
 - iii. Fences;
 - iv. Asphalt, concrete, or brick sidewalks, curbs, parking pads, aprons or driveways;
 - v. Structures (including decks, stairs, patios, balconies, etc.);
 - vi. Retaining walls;
 - vii. Swimming pools and hot tubs;
 - viii. Shrubs, trees, or other organic landscaping materials planted in Reserve or County owned property;
 - ix. Hard landscaping (including asphalt, concrete paving stones, retaining walls, planters and structures);
 - x. Light standards;
 - xi. Permanent Signs.



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- g) Encroachment Agreement – an agreement (including Road Encroachment Agreements) between the applicant and the County authorizing an encroachment and shall, among other things, include:
 - i. The location and identification of the encroachment;
 - ii. Fees;
 - iii. The owner’s responsibilities to maintain the Encroachment;
 - iv. Terms or conditions under which the agreement is terminated;
 - v. Cost and liability for removal; and
 - vi. Indemnification of the County, its agents and licensees.
- h) 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.
- i) Land Use Bylaw – the bylaw that has been adopted by the County for the purpose of prohibiting or regulating and controlling the use and development of land and buildings within the County of Lethbridge.
- j) Letter of Consent – a letter from the County of Lethbridge authorizing an encroachment without the benefit of entering into a formal Encroachment Agreement.
- k) Municipal Lands - collectively or individually, roads, easements, reserve parcels, and County-owned parcels.
- l) 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 County-owned parcel, “owner” shall mean the owner of the adjacent land which has an encroachment into the road, reserve, or County-owned parcel.
- m) 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;
- n) Reserve – all municipal reserves, environmental reserves, municipal and school reserves, school reserves as defined in Section 664-666 of the *Municipal Government Act*, or a public park.



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- o) 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.

Scope

This policy applies to all requests for an Encroachment Agreement within the County of Lethbridge municipal boundaries.

Responsibilities

Council:

- i. To receive, review and consider for adoption the policy and any recommended amendments.
- ii. To consider appeals referred to in this Policy.

Community Services Department:

- i. To make recommendations to the Senior Management Team regarding this policy and amendment hereto;
- ii. Decide on the acceptability of encroachments through consultation with the affected County departments and utilities;
- iii. Ensure that this policy is implemented, monitored, and evaluated.

Other County Departments:

- i. Review and make recommendation to Community Services Department on the application for Encroachment Agreements that are circulated for comment.

Bylaw Enforcement:

- i. Enforce encroachment related bylaw offences, as appropriate.

PROCEDURES

1. Unless an encroachment is authorized by the County pursuant to this policy, the encroachment shall be removed from the affected municipal lands.
2. Where an encroachment exists without County approval, the owner shall be required to remove the encroachment at his/her own expense, or seek permission from the County for the encroachment to remain.



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3. An Encroachment Agreement between the County and Owner shall be registered at the Alberta Land Titles Office - Calgary by caveat, subject to the Owner paying the applicable fees set out in this policy.
4. Unless otherwise stated, an Encroachment Agreement once authorized by the County may continue to be used providing that the size of the encroachment is not increased, and the encroachment is not 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.
5. If an encroachment or the structure benefitting 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 replaced and shall be removed from the municipal lands unless the repair or replacement has been authorized by the County.
6. All requests for an Encroachment Agreement submitted to the County must be accompanied by:
 - a. A written request for an Encroachment Agreement;
 - b. A RPR no older than ten (10) years showing the encroachment; and
 - c. An application fee as described in this policy.
7. Encroachment onto Reserves and County-owned Parcels:
 - a. Encroachment less than 0.05 metres (0.16 feet) may not require an Encroachment Agreement. At the discretion of the Community Services Department, a Letter of Consent may be authorized in lieu of an Encroachment Agreement.
 - b. Where an encroachment extends into County-owned parcel in excess of 0.05 metres (0.16 feet), the applicant may apply to the Community Services Department for an Encroachment Agreement. The request for an Encroachment Agreement will be considered on its own merit in consultation with other County Departments.



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- c. If an Encroachment Agreement is deemed acceptable by the County, a caveat will be registered against the Owner's land and the County-owned parcel.
 - d. The Owner shall remove the encroachment from the County-owned parcel if the encroachment has not been authorized within 30 days of receiving a notice of refusal.
8. Encroachments into Roads and Easements
- a. Encroachments less than 0.05 metres (0.16 feet) may not require an Encroachment Agreement. At the discretion of the Community Services Department, a Letter of Consent may be authorized in lieu of an Encroachment Agreement.
 - b. Where an Encroachment extends into a road in excess of 0.05 metres (0.16 feet), the Owner(s) may apply to the Community Services Department for an Encroachment Agreement. The request for an Encroachment Agreement will be considered on its own merit in consultation with applicable County Departments.
 - c. If an Encroachment Agreement is deemed acceptable by the County, a caveat will be registered against the Owner's land and the County-owned parcel.
 - d. The Owner shall remove the encroachment from the County-owned parcel if the encroachment has not been authorized within 30 days of receiving a notice of refusal.
9. Where an encroachment has been authorized by the County, the Owner(s) shall execute the Encroachment Agreement prepared and delivered by the County in a timeframe specified by the County, or the encroachment shall be removed from the municipal lands within 30 days of receiving notice to do so.
10. 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.
11. Notwithstanding any other provisions of this policy, the County reserves the right to limit the terms of an Encroachment Agreement, Letter of Consent, or other



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authorization or provide for the termination of an Encroachment Agreement, Letter of Consent, or other authorization in the event that the encroachment could be affected by future plans for utilities, road widening, or other requirements.

12. All expenses, costs, liabilities, or other risk associated with an authorized encroachment shall be borne by the Owner(s).
13. Appeals
 - a. If an Encroachment has not been authorized, the Owner(s) may appeal to Council by requesting a review of the Administration's decision in writing to Council.
 - b. All requests for appeals must be accompanied by:
 - i. A copy of the request for an Encroachment Agreement;
 - ii. A copy of the notice of refusal;
 - iii. Reasons why an appeal is being lodged;
 - c. Council's decision shall be final and binding.
14. Enforcement
 - a. Unless an encroachment is authorized by the County, 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).
 - b. If the Owner(s) refuses to remove the encroachment or fails to apply for authorization under this policy, the County may take action to remove the encroachment and seek reimbursement from the Owner(s) for all such costs in accordance with the applicable County bylaws and policies and in accordance with the *Municipal Government Act*.
15. Application Fees and Encroachment Fees
 - a. Application Fee:
 - i. For an application for authorization of an encroachment where it is necessary to circulate the application to County departments and Utilities: \$100.00.
 - b. Encroachment Fees:
 - i. For encroachments which are no more than 0.05 metres and a Letter of Consent is requested: \$50.00.
 - ii. For encroachments which are more than 0.05 metres the fee will:



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50% of the assessed value of the owners land per square metre
x
the total encroachment area (in square metres)

- c. The fee schedule may be revised from time to time with the approval of Council.