

	<h1>Town of Cochrane Policy</h1>
<b>Policy No.:</b> <b>Policy Title:</b> <b>Approval Date:</b> <b>Revision Date:</b> <b>Department:</b>	<b>2002-01</b> <b>Encroachment Agreement Policy</b> <b>February 14, 2000</b>  <b>Planning &amp; Engineering Services</b>

## Policy Statement:

The Town of Cochrane 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 streets and reserves and also has interests in privately owned land by way of rights of way and easements. On behalf of the citizens of Cochrane, the Town must ensure that encroachments do not adversely affect these lands, rights of way, and easements or the Town's ability to maintain effective services or 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.

## 1. Reason for Policy

- 1.1 The following Encroachment Policy will assist the public and enable the Town to effectively manage encroachments. It is intended to provide a more consistent approach in processing applications, enforcing the policy, and protecting and indemnifying the Town wherever encroachments have been identified.

## 2. Related Information

- 2.1 Municipal Government Act

## 3. Definitions

- 3.1 Council means the Municipal Council for the Town of Cochrane.
- 3.2 Developer Fence means a fence installed under a subdivision servicing or development agreement.
- 3.3 Easement means any right of way or easement for the passage and maintenance of public utilities, identified by a registered plan or by

description and document by a Registered Easement or Utility Right of Way Agreement granted to the Town and utility companies/operators.

3.4 Encroachment means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (excluding sound attenuation structures or fences as required by the Town), that extends on, over or under municipal lands and shall include but not be limited to the following:

- (i) Buildings and all projections (including eaves, 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 landscape materials planted in reserves or Town owned parcels.
- (ix) Hard landscaping (including but not limited to retaining walls, structures, fire pits, and planters).
- (x) Light standards.
- (xi) Signs.

3.5 Encroachment Agreement means an agreement (including a License of Occupation or an agreement amending an existing easement or right of way agreement) between the applicant and the Town authorizing an encroachment and shall, among other things, include:

- (i) location and identification of the encroachment
- (ii) fees
- (iii) term
- (iv) termination notice
- (v) cost and liability for removal
- (vi) indemnification of the Town, its agents or licensees
- (vii) a provision requiring removal following a minimum of 30 days notice by the Town

3.6 Fence means a standard chain link fence, wooden fence or equivalent with posts no larger than 0.25m by 0.15m, centered approximately 2.4 m apart, with a maximum height of 2.0 m.

3.7 Municipal Lands mean collectively or individually a street, easement, reservoir or Town owned parcel.

- 3.8 Property Owner means the owner of land adjacent to Municipal Lands or the owner of land encumbered by an easement, who has required or may require an encroachment agreement on the said Municipal Lands or easement.
- 3.9 Reserve includes all municipal reserves (MR or any of the original designates), environmental reserves (ER), municipal and school reserves (MSR) or school reserves (SR), as defined in Sections 664 - 666 of the Municipal Government Act, or a public park, recreation ground or exhibition ground as defined in Section 70(l)(b) of the Municipal Government Act.
- 3.10 Street means any thoroughfare, highway, road, trail, avenue, viaduct, lane, alley, square, bridge, causeway, trestle, walkway, or other similar feature, which are lands administered by the Town, any part of which the public is entitled or permitted to use.
- 3.11 Tolerance of measurements, when referred to in this policy, shall take into consideration errors introduced by survey measurements. For the purposes of determining compliance with this policy with respect to the location of encroachments, measurements shall be rounded off to the same number of significant figures (i.e., 600mm would change to 0.6 m; 3 m to 3.0 m, between 0.25 m and 0.34 m would be rounded to 0.3 m and between 0.35 m and 0.39 m would be rounded to 0.4 m).
- 3.12 Town means the Corporation of the Town of Cochrane.
- 3.13 Town Owned Parcel is any titled land the Town owns excluding a reserve street or easement.
- 3.14 Utility means any of the following:
- (i) Systems for the distribution of gas, whether artificial or natural, electricity, telephone, cable television, and oil products;
  - (ii) Facilities for storage, transmission, treatment, distribution, or supply of water;
  - (iii) Facilities for the collection, treatment, movement, or disposal of sanitary sewage, including pumping stations;
  - (iv) Storm sewer drainage facilities, including collection, pumping stations, storm water ponds, and wetlands;
  - (v) Any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

#### **4. Responsibilities**

- 4.1. Town Council to:

- 4.1.1 Approve by resolution this policy and any amendments.
  - 4.1.2 Consider the allocation of resources for successful implementation of this policy in the annual budget process.
  - 4.1.3 To consider any requests to enter the Municipal Reserve disposition or Environmental Reserve boundary adjustment processes.
  - 4.1.4 To deal with those matters referred to it by this policy in any manner it believes are warranted.
  - 4.1.5 To act as a body of last resort for matters requiring variance or relaxation from this policy.
- 4.2 Chief Administrative Officer to:
- 4.2.1 Implement this policy and approve procedures.
  - 4.2.2 Ensure policy and procedure reviews occur and verify the implementation of policies and procedures.
- 4.3 Director of the Department to:
- 4.3.1 Ensure implementation of this policy and procedure.
  - 4.3.2 Ensure that this policy and procedure is reviewed every three years.
  - 4.3.3 Make recommendations to the Chief Administrative Officer of necessary policy or procedure amendments.
  - 4.3.4 To receive, review, and respond to all requests for encroachments onto Town streets and rights of way.
  - 4.3.5 To prepare and have executed encroachment agreements and licenses of occupation.
  - 4.3.6 To maintain an inventory of all agreements and encroachments onto streets, Town owned lands and rights of way.
  - 4.3.7 To advise Council on matters related to the disposition of Municipal Reserve or boundary adjustment of Environmental Reserve.
- 4.4 Supervisor to:

- 4.4.1 Understand, and adhere to this policy and procedure.
- 4.4.2 Ensure employees are aware of this policy and procedure.
- 4.4.3 To advise any applicants of the process required for obtaining Town consent for encroachment and provide listing of contact people of various franchises.
- 4.4.3 To issue letters of compliance and development permits on properties where encroachments exist once proof of registration of an encroachment agreement or license of occupation is provided.

4.5 All Employees to:

- 4.5.1 Understand and adhere to this policy.

## **5. Exclusions**

- 5.1 Encroachments shall not be allowed except where:
  - (i) The encroachment meets the criteria as outlined in Schedule “A”, or
  - (ii) A property owner enters into an Encroachment Agreement or License of Occupation, where applicable, for encroachments into a street or easement as per Schedule “B”, or
  - (iii) The Town has previously authorized an encroachment by written agreement
- 5.2 Utilities authorized by the Town to be located within an easement, public utility lot, Town owned parcel, or street will not be considered as an encroachment.
- 5.3 No encroachment will be permitted where it is adjacent to or located on a Town owned parcel with overhead electrical lines.
- 5.4 Schedule “A” (Encroachments into a Street, an Easement or Reserve Not Requiring an Encroachment Agreement)

## **6. Special Situations**

- 6.1 No encroachments into an emergency access easement shall be permitted. All such encroachments shall be removed immediately by the Property Owner at his expense. Should the Property Owner be unable or unwilling to remove the encroachment, then the Town shall immediately remove the encroachment and all costs associated with the removal incurred by the Town shall be borne by the Property Owner.

## **7. Appendix**

7.1 Policy Guidelines (Attachment 1)

7.2 Schedule “A” (Encroachment into a Street, an Easement or Reserve not Requiring an Encroachment Agreement)

7.3 Schedule “B” (Encroachment into a Street, Easement, or Reserve Encroachment Agreement or License of Occupation Required)

## **8. End of Policy**

## **1. Policy Guidelines (Attachment 1)**

- 1.1 Unless the Town authorizes an encroachment, the Town or the Owner shall remove the encroachment from the affected Municipal Lands, within 30 days of receiving notice to do so. All work conducted in removing an encroachment shall be at the cost of the Property Owner.
- 1.2 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 Property Owner as soon as practically possible, but no longer than 30 days of receiving notice to do so.
- 1.3 An Encroachment Agreement authorized by the Town and executed by the applicant shall be registered by caveat on the title of the applicant's land at the Property Owner's cost.
- 1.4 An authorized Encroachment Agreement does not release an applicant from the responsibility to comply with Provincial or Federal requirements or other municipal bylaws.
- 1.5 All expenses, costs, liabilities, or other risk associated with an authorized encroachment shall be borne by the Property Owner.
- 1.6 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:
  - (i) as may be necessary to remove the encroachment; or
  - (ii) as may be necessary for the routine maintenance of the encroachment.
- 1.7 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.
- 1.8 The Town will respond to all encroachment complaints and will apply this policy when encroachments are identified through normal management of Municipal Lands.
- 1.9 Existing encroachments authorized by Licenses of Occupation, Encroachment Agreements, Maintenance and Indemnity 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.

1.10 An encroachment shall not interfere with the Town's or other utility operator's need to access the easement.

1.11 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 Property Owner and at the sole cost of the Property Owner. Should the Property 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 borne by the Property Owner.

## **2. General Guidelines:**

2.1 Where an encroachment is identified, an applicant may make an application to the Town, as outlined in Schedule "B", for consideration of such encroachment, if within:

- (i) an easement: it will be reviewed by all affected departments and any affected utility operator. If deemed acceptable, an Encroachment Agreement will be issued, with the exception of an encroachment into an emergency access easement, where the encroachment shall be immediately removed.
- (ii) a street: it will be reviewed by the Director of Planning and Engineering Services and any affected utility operator. If deemed acceptable, consideration for closure and sale of a portion of the street may be recommended or a License of Occupation will be granted.
- (iii) a reserve: it will require removal unless other alternatives are pursued as referenced in this policy document.
- (iv) any other Town owned parcel: all affected departments and any affected utility operator will review it. If deemed acceptable, sale of the Town-owned parcel or an interest (License of Occupation) in any portion of that parcel may be recommended.

## **3. Guidelines for Encroachment into Reserves and Town Owned Parcels:**

3.1 Where an encroachment extends from a lot registered prior to the date of passage of this policy into a reserve (including ER) or a Town owned parcel by 0.3 m or less, the Property Owner may elect to enter into a License of Occupation agreement authorizing the encroachment, or shall remove the encroachment.

3.2 An application for License of Occupation is to be made to the Town under the following condition:



- (i) As per Schedule "B", all affected departments and any affected utility operator will review encroachments, and if deemed acceptable, a License of Occupation will be granted; otherwise,
- (ii) Encroachments as identified in Schedule "A" will not require an Encroachment Agreement or License of Occupation.

3.3 Where an encroachment extends into a reserve (including ER) or a Town-owned parcel by more than 0.3 m, the applicant shall remove the encroachment as directed by the Director of Planning and Engineering Services.

3.4 Section 3.2.1 shall not apply to encroachments extending into a reserve (including ER) or a Town owned parcel where that lot was registered subsequent to the passage of this policy. The applicant as directed by the Director of Planning and Engineering Services shall remove all encroachments, notwithstanding Section 3.2.4.

3.5 If a Property Owner objects to entering into a License of Occupation or to the removal, the Property Owner may apply to Council for disposition of the reserve affected by the encroachment (Section 70 and 674 of Municipal Government Act) or in the case of ER, for boundary rectification (Section 676 of the Municipal Government Act).

3.6 The disposition of any interest in MR and ER parcels is subject to a public hearing of Council.

3.7 The disposition 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.

3.8 All costs associated with disposition of reserves shall be borne by the Property Owner including but not limited to survey costs, application for subdivision, and registration.

#### **4. Guidelines for Encroachment into Streets:**

4.1 An encroachment into a street right of way is not permitted and shall be removed from the street except as otherwise indicated in this policy.

4.2 An application for a License of Occupation is to be made to the Town under the following condition:

- (i) As per Schedule "B", all affected departments and any affected utility operator will review encroachments, and, if deemed acceptable, a License of Occupation will be granted; otherwise,

(ii) Encroachments as identified in Schedule "A" will not require a License of Occupation.

4.3 The License of Occupation will allow the Town to require removal within 30 days of being notified to do so.

4.4 Where an owner granting land adjacent to a street to the Town pursuant to Section 21 of the Municipal Government Act (i.e., a Dedication Agreement where an existing encroachment is to remain) creates an encroachment, the Town shall without charge enter into a License of Occupation with the owner. The removal period would be related to the life of the encroachment or until it would be necessary for the Town to commence construction to widen the affected roadway.

## **5. Guidelines for Encroachment into Easements:**

5.1 An encroachment into an easement will be reviewed, and, if the encroachment is in accordance with the attached Schedule "A", it will be allowed, except where it is adjacent to or located on a Town owned parcel with an overhead electrical line.

## **6. Enforcement**

6.1 An encroachment into a street, right of way, easement, MR, ER, or other Town owned parcel is enforced by the designated officers under the jurisdiction of relevant Town bylaws and Provincial Statutes.

6.2 Fees And Costs

6.3 Fee Schedule (As Prescribed By Council):

6.4 Easements/Streets/Reserves:

6.5 Schedule "B" application as established by resolution of Council

6.6 This fee schedule may be revised from time to time by resolution of Council.

6.7 Any additional costs required to facilitate an encroachment, including but not limited to a road closure or subdivision application or reserve disposition, shall be borne by the Property Owner.

6.8 Any costs of utility relocation or reconstruction required to facilitate an encroachment shall be the responsibility of the Property Owner.

## **Schedule "A"**

1. Encroachments into a Street, an Easement or Reserve Not Requiring an Encroachment Agreement:
  - 1.1 Driveways, sidewalks, curbs, or steps which provide access to a building or structure, excluding retaining walls or landscape appurtenances that are in the opinion of the Director of Planning and Engineering Services to be features not directly benefiting the access.
  - 1.2 Portable sheds less than 9.3 m<sup>2</sup> (100 ft.<sup>2</sup>) encroaching into an easement.
  - 1.3 Fence sections that span an easement or encroach less than 0.3 m into an easement or encroach less than 0.3 m into a street.
  - 1.4 Concrete garage aprons encroaching less than 0.3 m into lanes.
  - 1.5 Retaining walls less than 0.2 m in height, except where located within 2.0 m of an above ground shallow utility facilities.
  - 1.6 Non-permanent surface improvements including landscaping features, ground cover, driveways (i.e., gravel, shale, etc.).
  - 1.7 Self supporting steps built into an easement.
  - 1.8 Eaves into an easement built prior to April 1994 and receiving a Certificate of Compliance or encroaching less than 0.1 m into an easement.
  - 1.9 Signs or canopies projecting into a street complying with Land Use Bylaw 1/99, as amended, or any successive land use bylaw.
  - 1.10 Any fence projecting across or through an overland drainage right of way.
  - 1.11 Any encroachment constructed for valid municipal purposes by the Town or its agents (e.g., bollards, sound barriers, developer fences, subdivision entrance signs, guard rails, etc.)
2. Developer Fences not requiring an Encroachment Agreement:
  - 2.1 The fence constructed along the southerly portion of Quigley Drive encroaching into Lot 53MR, Plan 8910838.

## **Schedule "B"**

1. Encroachments into a Street, Easement, or Reserve Encroachment Agreement or License of Occupation Required
  - 1.1 Applications for Encroachment Agreements or Licenses of Occupation will be made to the Town.
    - (i) If WITHIN the guidelines set out in Schedule "A", the applicant will be advised in writing that no Encroachment Agreement is necessary.
    - (ii) If NOT WITHIN the guidelines set out in Schedule "A", the applicant will be required to enter into an Encroachment Agreement or License of Occupation and asked to provide:
      - (i) an originally signed Real Property Report, surveyed after January 1, 1995, detailing the property and the extent of the encroachment;
      - (ii) the application fee, as approved by Council; and
      - (iii) a cover letter or letter of intent

Upon receipt of items 1 through 3, the Town will commence processing of an Encroachment Agreement.

	<h1>Town of Cochrane Procedure</h1>
<b>Policy No.:</b> <b>Policy Title:</b> <b>Department:</b>	<b>2002-01</b> <b>Encroachment Policy</b> <b>Planning &amp; Engineering Services</b>

1. The following is a list of items that combined will form an Application for Encroachment

1.1 **(i) A Real Property Report**

Real Property Reports (survey) may be obtained from any Alberta Land Surveyor. They provide a detailed map of a specific property. We require at least one originally signed Report. A Real Property Report surveyed greater than one year prior to making application, but not surveyed before January 1, 1995 shall be accompanied by a statutory declaration signed by the Property Owner. The statutory declaration shall state that the Real Property Report is an accurate depiction of all improvements on the property and no further improvements have been made to the property. The Town shall not accept Real Property Reports surveyed prior to January 1, 1995.

**(ii) A Letter of Intent**

This is a cover letter that will explain the circumstances that have led you to apply for an agreement. Please highlight anything you would like brought to our attention and be sure to reference the property's address and legal description.

**(iii) Fee**

Fees for Encroachment Applications are subject to which Schedule they fall under in the Town of Cochrane Encroachment Policy. If a feature is identified under Schedule "B", the fee is **\$75.00**, or as set by resolution of Council from time to time, and the application is subject to review prior to a decision to approve or refuse the encroachment.

**Applications will not be processed if any part of these requirements is missing.**

2. Once your application is complete, **one (1)** copy of the complete application must be delivered to:

**Town of Cochrane**  
**Planning and Engineering Services**  
**101 RancheHouse Road**

**COCHRANE AB T4C 2K8  
(403) 851-2571**

3. The Property Owner shall also provide **one (1)** complete copy of the application required under 1.0 above, in addition to a copy of the Consent Letter (attached) to **all** of the relevant utility companies. The Town of Cochrane shall provide a list of addresses to which the information package is to be sent.
4. No Agreement shall be drafted or executed until responses have been received from all potentially affected parties.
5. If any utility company or other potentially affected party refuses to provide consent to an Agreement, no Agreement shall be drafted or executed, and the Property Owner shall be required to remove the encroachment, at the cost of the Property Owner.
6. If any utility company or other potentially affected party provides conditional consent to an Agreement, then the conditions of consent shall be satisfied prior to an Agreement being executed and registered.
7. If all potentially affected parties provide consent to an Agreement, the Town shall draft an Agreement for execution by the Property Owner. A document will be prepared for your signature to be registered at Alberta Registries, Land Titles Office. The Agreement will allow the encroachment to remain for the life of the structure; that is, the feature may not be rebuilt on Town land if it is removed for any reason.
8. Once an Agreement is signed and sealed by the Town, the Town shall forward the Agreement to the Property Owner or his Agent for execution and registration at Alberta Registries, Land Titles Office.
9. The Town shall only stamp a Certificate of Compliance, or issue a Development Permit, as the case may be, once evidence is produced that the Agreement has been registered against title at the Alberta Registries, Land Titles Office.

**10. End of Procedure**

**If you have any questions regarding any element of the  
Encroachment Application Procedure, please contact the Town of  
Cochrane, Planning and Engineering Services, at (403) 932-5513.**

**LIST OF AGENCIES TO BE CIRCULATED AN APPLICATION:**

**ATCO Gas Co.  
Attn: Susan Gold  
6<sup>th</sup> Floor, 909 - 11 Avenue SW  
CALGARY AB T2R 1L8  
Tel. 245-7839  
Fax. 245-7250**

**TransAlta Utilities Corporation  
Attn: Jennifer Graille (Land Services)  
P.O. Box 1900, Station 'M'  
CALGARY AB T2P 2M1  
Tel. 267-3883  
Fax. 267-**

**Telus Communications Inc.  
Attn: Ken Walker, Real Estate Specialist  
12040 – 107 Street  
EDMONTON AB T5G 2S7  
Tel. (780) 441-2432  
Fax. (780) 441-7205**

**Shaw Cablesystems GP  
Attn: Fred Lau  
2001 – 27 Avenue NE  
CALGARY AB T2E 7E5  
Tel. 716-6070  
Fax. 303-6300**

**Standard Form Letter for Utility Company Response**

**MAIL TO:**

Town of Cochrane  
Planning & Engineering Services  
101 RancheHouse Road  
COCHRANE AB T4C 2A8  
Attn: Planning and Development Officer

**FROM:**

*Corporate Name & Dept.*  
*Street Address*  
*Municipality, Province*  
*Postal Code*  
*Contact Person*  
*Phone No.*

**1.1.1.1.1 Re:      Town of Cochrane Request for Encroachment  
                         Agreement**

**Lot \_\_\_\_\_, Block \_\_\_\_\_, Plan \_\_\_\_\_**

**Street Address: \_\_\_\_\_**

**Applicant's Name: \_\_\_\_\_**

Please be advised that \_\_\_\_\_ has:  
(corporate name)

**A. NO OBJECTIONS TO THE IDENTIFIED ENCROACHMENT**

And hereby consent to the registration of an Encroachment Agreement.

**B. THE FOLLOWING CONCERNS WITH THE IDENTIFIED ENCROACHMENT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And therefore refuses to consent to the registration of an Encroachment Agreement.



**C. THE FOLLOWING CONCERNS WITH THE IDENTIFIED ENCROACHMENT**

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And hereby consent to the registration of an Encroachment Agreement, subject to the following conditions:

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\_\_\_\_\_

Date

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature

**2. End of Procedure**

**Approval**



\_\_\_\_\_  
Julian deCocq, C.A.O

March 30 2009  
Date