



# TOWN OF CANMORE POLICY

**EFFECTIVE DATE:** 8 January, 2008

**ADOPTED BY RESOLUTION #:** 04 -2008

**POLICY TITLE:** Encroachment Policy (2008)

## POLICY STATEMENT

The Town realizes private encroachments on Town of Canmore property and easements 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 easements. On behalf of the citizens of Canmore, the Town must ensure that encroachments do not adversely affect these lands 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 allowed to keep the encroachment, may be required to enter into an agreement or, alternatively, remove the encroachment.

The following Encroachment Policy will assist the public and enable the Town to manage encroachments effectively. 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.

## 1.0 DEFINITIONS

- (a) **Council** means the Municipal Council for the Town.
- (b) **Developer Fence** means a fence installed under a subdivision or development agreement.
- (c) **Easement** means any right-of-way for the passage and maintenance of public utilities, identified by a registered plan or by description and documented by a Registered Easement Agreement granted to the Town.
- (d) **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 is not 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 fence).
  - (iii) Fences.
  - (iv) Asphalt, concrete or brick sidewalks, curbs, parking pads, aprons or driveways.
  - (v) Structures (including decks, stairs patios, etc.).
  - (vi) Retaining walls, and extension of adjacent lands by fill.
  - (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, planters).

- (x) Light standards.
- (xi) Signs.
- (e) **Encroachment Agreement** means an agreement (including a License of Occupation or an agreement amending an existing utility right-of-way) between the applicant and the Town authorizing an encroachment and shall, among other things, include:
  - (i) location and identification of the encroachment;
  - (ii) term;
  - (iii) termination notice;
  - (iv) cost and liability for repair and removal;
  - (v) indemnification of the Town, its agents or licensees;
  - (vi) a provision requiring removal following a minimum of 30 days notice by the Town.
- (f) **Fence** means a vertical physical barrier constructed to provide visual screening or to prevent unauthorized access or both.
- (g) **Municipal Lands** means collectively or individually a street, easement, reservoir or Town owned parcel.
- (h) **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.
- (i) Public utility lot means a parcel of land dedicated for public utilities and designated as "PUL" on a plan of survey.
- (j) **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 the Municipal Government Act or a public park, recreation ground or exhibition ground as defined in the Municipal Government Act.
- (k) **Street** means any thoroughfare, highway, road, trail, avenue, viaduct, lane, alley, square, bridge, causeway, trestle, walkway or other place, which are lands administered by the Town, any part of which the public is entitled or permitted to use.
- (l) **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. a survey measurement 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), etc.
- (m) **Town** means the corporation of The Town of Canmore.
- (n) **Town Owned Parcel** is any titled land the Town owns excluding a reserve, street or easement.
- (o) **Utility** means any one or more 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 water drainage facilities, including collection, treatment, pumping stations, storm water ponds, and wetlands;
  - (v) Any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

## 2.0 ENCROACHMENTS INTO STREETS / ROADS / LANES

- 2.1 Encroachments into streets or road rights of way shall not be allowed except where:
- (i) The Encroachment meets the criteria as outlined in Schedule A; or
  - (ii) The Town has previously authorized an Encroachment by written agreement as authorized by the Municipal Government Act.
- 2.2 Encroachments as identified in Schedule "A" will not require an Encroachment Agreement. The Town may provide a letter in the form of Schedule "B," allowing the Encroachment to remain until such time as the Town instructs the Property Owner responsible for the Encroachment to remove it.
- 2.3 Unless the Town authorizes an Encroachment, the Town or the Owner shall remove the Encroachment from the affected street, lane or road right of way, following a minimum of 30 days notice in writing from the Town. All work conducted in removing an Encroachment shall be at the cost of the Property Owner responsible for the Encroachment.
- 2.4 Encroachments into Municipal Lands that are designated as or are part of an emergency access **shall** be removed from the affected Municipal Lands following a minimum of 14 days notice in writing from the Town, at the cost of the Property Owner.
- 2.5 Where an Encroachment is created by an owner granting land adjacent to a street to the Town (i.e. a Dedication Agreement where an existing Encroachment is to remain), the Town shall without charge permit an Encroachment Agreement to be entered into with the owner. The removal period is subject to negotiation with the Town and would be related to the life of the Encroachment or until the Town requires road widening.
- 2.6 An Encroachment Agreement authorized by the Town and executed by a Property Owner shall be registered by caveat on the title of the Property Owner's land.
- 2.7 Public or franchise utilities located within a public utility lot or street authorized by the Town will not be considered as an Encroachment.
- 2.8 An encroachment shall not interfere with the Town's or other utility company's need to access the easement.
- 2.9 Encroachments to accommodate pedestrian shelter (and attached signage) above sidewalks in commercial areas may be approved at the sole discretion of the Town, when the Encroachment clearly provides shelter to the public sidewalk. In such cases,
- (i) All such encroachments shall be specifically approved through an Encroachment Agreement.
  - (ii) The minimum vertical dimension from the sidewalk to the underside of the Encroachment shall be 2.4m.
  - (iii) In horizontal dimension, the Encroachment shall only be permitted above pedestrian areas and may not be extended above vehicle travel areas.
- 2.10 All expenses, costs, liabilities, or other risk associated with an Encroachment shall be borne by the owner responsible for the Encroachment.

- 2.11 An Encroachment once authorized through an Encroachment Agreement or by letter in the form of Schedule “B” 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.
- 2.12 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 be removed unless the repair or reconstruction is authorized by the Town.
- 2.13 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.
- 2.14 Notwithstanding any of the above, in the event that an Encroachment poses 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 responsible for the Encroachment.

### **3.0 ENCROACHMENTS ONTO RESERVES AND TOWN OWNED PARCELS**

- 3.1 The only Encroachments permitted onto reserves and Town owned parcels are those that do not interfere or restrict the public’s ability to access, use and enjoy the land, in the sole determination of the Town.
- 3.2 No structures shall be permitted to encroach onto reserves or Town owned parcels.
- 3.3 No permanent improvements, including (but not limited to) compost bins, fire pits, barbeque areas, domestic lawns or ornamental landscaping and temporary uses including woodpiles, debris or garbage, excavation materials, vehicles, campers and trailer storage shall be permitted to encroach onto reserves or Town owned parcels.
- 3.4 Fences shall only encroach by a maximum of 1.0 metre onto reserves or Town owned parcels, and shall not result in the enclosure of the reserve or the Town owned land so that public access is discouraged.
- 3.5 Minor Encroachments onto reserves and Town owned parcels may be allowed to remain at the sole discretion of the Town. In such cases, the Town may provide a letter in the form of Schedule “B,” allowing the Encroachment to remain until such time as the Town instructs the Property Owner responsible for the Encroachment to remove it.
- 3.6 Encroachments onto reserves or Town owned lands that do not comply with this Policy shall be removed by the Property Owner that caused the Encroachment, following a minimum of 30 days notice in writing from the Town. All work conducted in removing an

Encroachment shall be at the cost of the Property Owner responsible for the Encroachment.

- 3.7 Public or franchise utilities located within a public utility lot or an easement located on reserves or Town owned parcels authorized by the Town will not be considered as an Encroachment.
- 3.8 The disposition of any interest in reserve parcels or Town owned lands shall be subject to approval by the Council in accordance with the relevant provisions of the Municipal Government Act.
- 3.9 All costs associated with disposition of an interest in reserve parcels shall be borne by the Property Owner responsible for the Encroachment.

#### **4.0 ENCROACHMENT INTO EASEMENTS AND UTILITY RIGHTS OF WAY**

- 4.1 An Encroachment into an easement or utility right of way in accordance with the limitations outlined in Schedule "C" will be allowed where they do not interfere with the basic operation and maintenance of the facility, except where adjacent to or located on a Town owned parcel with an overhead electrical line. In cases involving overhead electrical lines, no Encroachment will be permitted.
- 4.2 An Encroachment into an easement or utility right of way not within the limitations outlined in Schedule "C" may be permitted, if deemed acceptable by the relevant utility operator. In these cases, a new utility right of way document acknowledging the Encroachment will be required to be executed and registered, and a partial discharge of the existing agreement executed. All costs associated with the preparation, execution and discharge of agreements shall be borne by the Property Owner responsible for the Encroachment.
- 4.3 An Encroachment into an easement or utility right of way not within the limitations outlined in Schedule "C" that is not permitted and not deemed acceptable by the relevant utility operator shall be removed by the Property Owner responsible for the Encroachment and all costs associated with the removal shall be borne by the Property Owner.
- 4.4 No Encroachment into an emergency access easement shall be permitted. All such Encroachments into emergency access easements 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.

#### **5.0 GENERAL GUIDELINES**

- 5.1 Where an Encroachment is identified, a Property Owner may make an application to the Town, for consideration of such Encroachment. If within:
  - (i) an easement or utility right of way; it will be reviewed by all affected municipal departments and any affected franchise utility; or

- (ii) a street; it will be reviewed by all affected departments and any affected utility; or
- (iii) a reserve, it will be reviewed by all affected departments; it will require removal unless other alternatives are pursued as referenced in this Policy; or
- (iv) a Town owned parcel; all affected departments and any affected utility will review it.

## **6.0 ENFORCEMENT**

- 6.1 An encroachment into a street, easement, reserve, utility right of way or other Town owned parcel is enforced by a Designated Officer under the jurisdiction of relevant Town bylaws and Provincial Statutes.

## **7.0 ENCROACHMENT AGREEMENT FEES**

- 7.1 All Encroachments will be required to be removed, enter into an Encroachment Agreement or request a letter from the Town acknowledging the Encroachment pursuant to this Policy.
- 7.2 The Town may levy a fee for entering into an Encroachment Agreement, providing a letter acknowledging the Encroachment or amending a utility right of way agreement.
- 7.3 This fee shall be established by resolution of Council and may be revised from time to time by Council.
- 7.4 Any additional costs required to accommodate an Encroachment, including but not limited to a road closure or subdivision application or reserve disposition, shall be borne by the Property Owner responsible for the Encroachment.
- 7.5 Any costs of utility relocation or reconstruction required to accommodate an Encroachment shall be the responsibility of the Property Owner responsible for the Encroachment.

## **8.0 ENCROACHMENT AGREEMENT APPLICATION REQUIREMENTS**

When a Property Owner applies to the Town for an Encroachment Agreement, he / she shall provide the following:

- (a) a copy (preferably an original) of a Real Property Report detailing the property and the extent of the encroachment;
- (b) a copy of the title to the parcel;
- (c) the application fee; and
- (d) photographs of the encroachment.

Upon receipt of items (a) through (d), processing of an Encroachment Agreement will be commenced by the Town.

The Town will respond to all Encroachment complaints and will apply this policy when encroachments are identified through normal processes and management of Municipal Lands.

## **SCHEDULE "A"**

### **AUTHORIZED ENCROACHMENTS INTO A STREET**

#### **General:**

- (a) Encroachments shall in no cases exceed 0.3m into the street, easement or reserve.
- (b) In cases involving overhead electrical lines, no Encroachment will be permitted where adjacent to or located on a Town owned parcel with an overhead electrical line.
- (c) No Encroachments into an emergency access easement shall be permitted.

#### **Structures which provide direct access to a dwelling, including:**

- (a) front driveways (standard broom finished concrete – alternate, more costly materials may be permitted).
- (b) sidewalks to a maximum width of 2.0 metres (standard broom finished concrete – alternate, more costly materials may be permitted).
- (c) special needs access (ramps, elevators, fire escapes, etc.).
- (d) steps to a maximum width of 2.0 metres that provide access to a residential dwelling excluding retaining walls or landscape features that are in the opinion of the Town considered to be features not directly benefiting the access.

#### **Driveways which access lanes:**

- (a) which are constructed of asphalt, gravel, or shale which are constructed of 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.

#### **Fences:**

- (a) encroaching not more than 0.3 metres where the fence creates an enclosure.
- (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 fences running parallel to pathways (which run over a property line) may exceed 0.3 metres subject to minimum access requirements.

#### **Portable sheds and other accessory buildings and structures:**

- (a) Under 10 square metres (107 square feet) and encroaching not more than 0.3 metres.

#### **Retaining walls:**

- (a) not more than 0.2 metres in height and where not located within 2.0m to above ground utility surface facilities.

#### **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 trees and shrubs.
- (c) surface level rocks not more than 0.2 metres in height.
- (d) surface interlocking blocks.

**Pedestrian Shelter Above Sidewalks in Commercial Areas**

- (a) All such encroachments may be permitted and shall be specifically approved through an Encroachment Agreement at the sole discretion of the Town.
- (b) Arcades and structural awnings and structural canopies attached to building and store fronts that provide shelter to people on sidewalks.
- (c) Signage may be attached to the arcade, structural awning or structural canopies at the discretion of the Town, and subject to all permit requirements.
- (d) The minimum vertical dimension from the sidewalk to the underside of the Encroachment shall be 2.4m.
- (e) In horizontal dimension, the Encroachment shall only be permitted above pedestrian areas and may not be extended above vehicle travel areas.

**Other:**

Any encroachment constructed for valid municipal purposes by the Town or its agents (i.e. bollards, sound barriers, developer fences, subdivision entrance signs, guard rails, etc.)

**SCHEDULE "B"**

**LETTER FORM FOR MINOR ENCROACHMENTS**



**Date**

<Name>  
 <Address>  
 <City, Province>  
 <PC>

**RE: Encroachment into Road / Reserve Parcel / Utility Right of Way  
 Lot x, Block xx, Plan xxx xxxx  
 Municipal Address**

The Town has become aware of an encroachment (**description of the encroachment**) at the above noted property into the adjacent **<Road / Reserve Parcel / Utility Right of Way>**. The encroachment is within the guidelines set out in the Town of Canmore's Encroachment Policy and requires no Encroachment Agreement. The encroachment is permitted to remain until the Town notifies you that it must be removed or the encroachment needs to be replaced or substantially repaired, at which time it must then be removed to the property line.

By receipt and acknowledgement of this letter you also acknowledge that you are solely responsible for the encroachment and agree that you will, to the full extent of the law, indemnify and save harmless the Town from and against any and all claims, liabilities, actions, proceeds, demands, losses, costs, charges, damages and expenses whatsoever which may be brought against or suffered by the Town resulting from, attributable to or connected with the encroachment. If you are not willing to accept this responsibility, you must promptly advise the Town and remove the encroachment. You are also responsible for notifying future purchasers of the property of this obligation should you sell the property in the future.

If you have any questions or concerns, please do not hesitate to contact the undersigned at 678-xxxx.

Yours truly,

<Name>  
 <Position>

Please sign below to acknowledge receipt of this letter and return a signed copy to the Planning and Engineering Department at the Town of Canmore.

\_\_\_\_\_ Date

\_\_\_\_\_ Property Owner Signature

## **SCHEDULE “C”**

### **PERMITTED ENCROACHMENTS INTO UTILITY RIGHTS OF WAY AND EASEMENTS**

- (i) Surface vehicle driveways and parking areas (of any material);
- (ii) Surface pedestrian sidewalks and walkways (of any material);
- (iii) Sod, seed and planted landscaping such as shrubs and other low level landscaping but excluding trees and other deep rooted vegetation;
- (iv) Fences running through a utility right of way bisected by a property line;
- (v) Portable sheds and other portable accessory buildings (not on footings) under 10 square metres (107 square feet) in size;
- (vi) Retaining walls not more than 0.2 metres in height and where not located within 2.0m to utility above ground surface facilities;
- (vii) 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) Canada Post mail “superboxes” for Federal mail delivery;
  - (e) Any item constructed for municipal purposes for or by the Town.