

	<h2>Municipality of Crowsnest Pass Policy</h2>
<p>Policy No.: Policy Title: Approval Date: Supersedes Policy: Department:</p>	<p>2001-03 Encroachment Policy May 16, 2023 2001-02 Development, Engineering and Operations</p>

1.0 POLICY PURPOSE

The Municipality requires a policy to formalize a process for the fair, consistent and effective identification, review, and management of encroachments onto Municipal Lands in order to:

- a. meet the expectations of the public and professionals engaged real property sales; and
- b. ensure that the Municipality and its taxpayers are protected and indemnified wherever encroachments onto Municipal Lands have been identified; and
- c. ensure that the public understands that private buildings and other private improvements must be constructed within the boundaries of private property and in accordance with the yard setback standards established in the Land Use Bylaw, and that encroachment agreements are a tool to address historical situations and minor insignificant deviations, and are not intended to accommodate construction that was knowingly or negligently undertaken incorrectly.

2.0 DEFINITIONS

“Encroachment” – anything constructed or placed with a fixed location on the ground or attached to something having a fixed location on the ground, regardless of whether such thing is moveable or permanent, that extends on, over or under adjacent private property and/or Municipal Lands, and includes but is not limited to the following:

- a. Buildings, projections from buildings (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;
- i. Hard landscaping (including asphalt, concrete paving stones, retaining walls, planters, and structures);
- j. Light standards; and

k. Permanent Signs.

“Encroachment Agreement” – an agreement between the Owner and a private landowner or the Municipality, authorising an encroachment onto, respectively, adjacent private property or adjacent Municipal Lands, and shall, among other things, include:

- a. The location and identification of the encroachment;
- b. Fees, as may be required;
- c. An annual lease amount based on the nature, condition, extent and expected duration of the encroaching improvement;
- d. The Owner’s responsibilities to maintain the Encroachment;
- e. Terms or conditions under which the agreement is terminated;
- f. The term of the encroachment agreement and its transferability, or otherwise, to successors in title, depending on the nature, condition, extent and expected duration of the encroaching improvement;
- g. Cost and liability for removal of the encroachment; and
- h. Indemnification of the adjacent private landowner and/or the Municipality, its agents, and licensees.

“Municipal Lands” – collectively or individually, a road, lane, Municipal easement and other Municipal property collectively or individually, a road, lane, Municipal easement and other Municipal property [excluding Reserves – pursuant to ss. 651.2, 671(2), 674 and 676 of the Municipal Government Act, an encroachment agreement appears to be limited to a road, a Reserve parcel can only be used for specified purposes, a Municipal Reserve parcel can only be disposed of by way of a sale, a lease or other disposition after holding a public hearing and an Environmental Reserve parcel cannot be sold and can only be leased or disposed of for a term not exceeding three years and only by a bylaw adopted by Council].

“Municipality” – the municipal corporation of the Municipality of Crowsnest Pass, or the area contained within the Municipal 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 an encroachment, “Owner” shall mean the owner of the land which has an encroachment into adjacent lands.

“Reserves” or “Reserve Parcel” – municipal reserves, environmental reserves and other reserves as defined the Municipal Government Act.

“Responsible Department” means the office or department that develops and administers a particular policy and procedures and is accountable for the accuracy of its subject matter, issuance and timely updating.

3.0 POLICY STATEMENT

3.1 Related Information

The Municipality administers, has interest in, and manages and controls development on private property and a variety of Municipal Lands. Encroachments in the Municipality exist due to historical replotting schemes and construction practices of previous decades, and will continue to be discovered.

On behalf of the residents of Crowsnest Pass, the Municipality must ensure that encroachments do not adversely affect private property or Municipal Lands, or the Municipality's ability to maintain effective services and operations, and to provide public access, use and enjoyment of Municipal Lands.

Reserve parcels are not subject to this Policy because, pursuant to ss. 651.2, 671(2), 674 and 676 of the Municipal Government Act, an encroachment agreement appears to be limited to a road, a Reserve parcel can only be used for specified purposes, a Municipal Reserve parcel can only be disposed of by way of a sale, a lease or other disposition after holding a public hearing and an Environmental Reserve parcel cannot be sold and can only be leased or disposed of for a term not exceeding three years and only by a bylaw adopted by Council.

3.2 Cut-off Date and Exemptions for Valid Encroachments onto Municipal Lands

Due to historical replotting schemes and construction practices of previous decades, encroachments are expected in the older parts of the community, particularly for older properties and buildings. It is reasonable to expect that newer parts of the community and newer properties and buildings should not have encroachments due to improved construction practices.

The end of year 2022 and the start of year 2023 is determined to be a reasonable cut-off date for an encroachment onto Municipal Lands to be deemed to have merit for protection through an encroachment agreement.

A property that was developed or a building or other improvement that was constructed after the year 2022 is reasonably expected to have followed improved construction practices such as a legal survey of property boundaries prior to development or construction start, or prior to the installation of a fence or placement of a shed.

Except for those exemptions and notwithstanding clauses provided for in this Policy (see below and Schedule A of the associated Procedure), a private improvement that encroaches onto Municipal Lands and was constructed or established in the year 2023 and onwards, either knowingly or negligently, shall not be protected through an encroachment agreement and shall be removed or, where feasible and approved by Council, corrected through a land purchase at no cost to the Municipality.

The following exemptions to the cut-off date shall apply:

- a. *Those types of encroachments authorized to exist without an encroachment agreement (refer to Schedule A in the associated Procedure).*

Notwithstanding that an encroachment was established prior to or after the cut-off date, at the discretion of the Chief Administrative Officer or their designate, based on the circumstances of each case and without setting a precedent in any case, the cut-off date may or may not apply to and may or may not exempt:

- a. *A fence, a shed on skids and any other type of moveable building, structure or other type of private improvement that encroaches onto Municipal Lands.*

3.3 Unauthorized Encroachments onto Municipal Lands shall be Removed or may be Corrected through Land Purchase

Unless exempted in this Policy and clarified below, an encroachment onto Municipal Lands shall be removed, may be corrected through a land purchase where feasible and approved by Council, or may be authorised by an encroachment agreement, unless the type of encroachment is expressly permitted or exempted by this policy or in the associated Procedure.

- a.* A **fence, a shed on skids and any other type of moveable building**, structure or other type of private improvement that encroaches onto Municipal Lands, regardless of whether it meets the cut-off date, shall be removed at no cost to the Municipality, unless determined otherwise by and at the sole discretion of the Chief Administrative Officer or designate as provided for in this Policy.
- b.* A building with **commercial or residential occupancy**, including roof eaves, of which the **construction started in or prior to the year 2022** and which encroaches onto Municipal Lands may be corrected through land purchase where feasible and approved by Council, and where not feasible or denied by Council:
 - i.* shall not be required to be removed without compensation, and
 - ii.* may be protected through an encroachment agreement subject to all other provisions of this Policy.
- c.* A building with **commercial or residential occupancy**, including roof eaves, of which the **construction started in the year 2023 and onward** and which encroaches onto Municipal Lands may be corrected through land purchase where feasible and approved by Council, and where not feasible or denied by Council:
 - i.* shall not be protected through an encroachment agreement, and
 - ii.* shall be deemed to be an illegal building.

3.4 Maximum Term of Agreement and No Transfer to Successors in Title

The term of an encroachment agreement and its transferability, or otherwise, to successors in title, shall be dependent on the nature, condition, extent and expected duration of the encroaching improvement, at the sole discretion of the Chief Administrative Officer or their designate, with **ten years being the maximum term of any encroachment agreement**.

All encroachment agreements shall expire upon the transfer of property between seller and purchaser, and the encroachment agreement may be renewed for the same period of time for which it was previously valid, depending on the nature, condition, extent and expected duration of the encroaching improvement, at the sole discretion of the Chief Administrative Officer or their designate. The purpose of this requirement is that new owners of the property must be made aware of the encroachment agreement and its expiry.

For example, the encroachment of a residence or a permanent residential accessory building (including eaves) that qualifies for protection through an encroachment agreement as provided for in this Policy may be protected for a longer period (e.g. 10

years) than a fence or moveable shed (e.g. 5 years), and in both instances the encroachment agreement shall expire when the property transfers between owners.

3.5 Annual Lease Fee for Encroachment Agreements

Where a private improvement encroaches onto Municipal Lands and is denied protection under this Policy, the landowner who owns the encroachment is required to remove the encroachment or apply to the Municipality to purchase the land upon which the private improvement encroaches (see Disposal of Municipal Lands and Reserves Policy). If the purchase application is approved, the landowner is then responsible to obtain several additional approvals (i.e. Municipal Reserve closure, road closure, subdivision, rezoning, and development permit) to bring the encroachment into compliance, at no cost to the Municipality.

It is a privilege and not a right to have a private improvement that encroaches onto Municipal Land protected through an encroachment agreement, and the landowner of a private improvement that is determined to have merit for protection through an encroachment agreement should be reasonably expected to pay for that privilege.

Therefore, starting upon the date of approval of this Policy, every encroachment agreement that is entered into or that is renewed shall be subject to a clause that requires the landowner to pay an annual lease to the Municipality as may be determined in the Fees, Rates and Charges Bylaw. The annual lease amount may vary between a minimum and a maximum and the amount shall be determined in the sole discretion of the Chief Administrative Officer or their designate based on the nature, condition, extent and expected duration of the encroaching improvement.

Due to historical replotting schemes and construction practices of previous decades, the annual lease fee for a residence and/or garage that were established prior to 1990 shall be less than the fee for those that were established in 1990 or later.

3.6 Municipal Control Over Encroachments

Except where expressly stated or implied in this Policy, the provisions of this Policy regarding for example cut-off dates, exemptions, terms, conditions and the duration of an encroachment agreement, liability, annual lease fees, and transferability of an encroachment agreement, do not apply to an encroachment agreement between two private landowners. However, notwithstanding that position, the Municipality as the Development Authority having management and control over the development of lands within its jurisdiction pursuant to the Municipal Government Act and the Land Use Bylaw, shall be included as a third-party signatory in an encroachment agreement between two private landowners.

For an encroachment agreement between two private landowners in which the Municipality is a third-party signatory, and for an encroachment agreement between a private landowner and the Municipality for a private improvement that encroaches onto Municipal lands, the applicable provisions in the Land Use Bylaw shall apply relative to an exemption from the requirement to obtain a development permit.

3.7 Responsibilities

- a. Municipal Council to:
 - i. Approve by resolution this policy and any amendments.
 - ii. Consider the allocation of resources for successful implementation of this policy in the annual budget process.
- b. Chief Administrative Officer to:
 - i. Implement this policy and approve procedures.
 - ii. Ensure policy and procedure reviews occur and verify the implementation of policies and procedures.
- c. Development Engineering and Operations is the Responsible Department, and shall:
 - i. Ensure implementation of this policy and procedure.
 - ii. Ensure that this policy and procedure is reviewed every three years.
 - iii. Make recommendations to the Chief Administrative Officer of necessary policy or procedure amendments.

MUNICIPALITY OF CROWSNEST PASS



Blair Painter, Mayor

June 6, 2023
Date



Patrick Thomas, Chief Administrative Officer

June 7, 2023
Date