	<h2 style="text-align: center;">Municipality of Crowsnest Pass Procedures</h2>
<p>Procedure Category: Worksite: Approval Date: Revision Date: Department:</p>	<p>Encroachment Procedure Office August 23, 2022 May 16, 2023 Development, Engineering and Operations</p>

### 1.0 Definitions

**“Caveat”** – a form of notification registered on the certificate of title of a parcel of land.

**“Council”** – the Council for the Municipality of Crowsnest Pass.

**“Development Officer”** – a person appointed as Development Officer pursuant to the Land Use Bylaw.

**“Easement”** – a right-of-way on privately owned property or Municipal Lands established for the installation, construction, repair, and maintenance of utilities, or for the access and passage of the public, identified by a registered plan or by description and documented by a registered caveat or easement agreement at the Alberta Land Titles Office.

**“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.

**“Fence”** – any barrier, wall, or structure such as a chain link fence, wooden fence, metal fence, or brick/stucco wall, usually located along the property line.

**“Land Use Bylaw”** – the bylaw that has been adopted by the Municipality for the purpose of regulating and controlling the use and development of land and buildings within the Municipality of Crowsnest Pass.

**“Municipal Lands”** - 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.

**“Real Property Report (RPR)”** – a legal document prepared by an Alberta Land Surveyor that illustrates the location of significant visible building(s) and or structures relative to the property boundaries;

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

**“Road”** – land shown as a road or lane 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.

## 2.0 Procedure

### Cut-off Date for Valid Encroachments

- 2.1 The cut-off date(s) established in the Council approved Encroachment Policy to deem an encroachment to have merit for protection under an encroachment agreement, shall apply.

### Encroachment onto Municipal Lands

- 2.2 Any encroachment that has the effect of preventing or restricting public access, thoroughfare and/or use of Municipal Lands, or restricting sight lines, or affecting public safety or municipal operations, does not qualify for protection under an Encroachment Agreement. In such a case, the Owner must follow the procedures under Policy 2000 Disposal of Municipal Lands and Reserves (see paragraph 2.5.3 below, in this Procedure).
- 2.3 An encroachment onto Municipal Lands that is listed in **Schedule A** of this Procedure is authorized to exist without an encroachment agreement provided that the encroachment exists with the benefit of a development permit as may be required, or a development permit is not presently required or was not required at the time that the improvement was placed.
- 2.4 Notwithstanding clause 2.2, when an encroachment onto Municipal Lands that is authorized pursuant to **Schedule A** to exist without an encroachment agreement and it is subsequently determined by the Municipality that the encroachment adversely affects Municipal operations, maintenance of infrastructure or the public safety, the Municipality may require that the Owner take the appropriate action stated in clause 2.5.
- 2.5 An encroachment onto Municipal Lands that is not authorized to exist pursuant to clause 2.2, or a **Schedule A** exempted encroachment onto Municipal Lands that is subsequently determined to adversely affect Municipal operations, maintenance, or the public safety pursuant to clause 2.4, shall, as may be applicable:
- 2.5.1 be made authorized by the Owner applying to the Municipality for an encroachment agreement and a development permit as may be required, or
  - 2.5.2 be removed, relocated, or altered by the Owner at no cost to the Municipality, and subject to the Owner obtaining a development permit as may be required, or

- 2.5.3 be corrected by the Owner making an application to Council to purchase the required portion of Municipal Lands and thereafter obtaining road, lane or Municipal Reserve closure (or portions thereof), subdivision approval for a boundary adjustment, redistricting approval, and a development permit as may be required, all of which shall be in accordance with the Disposal of Municipal Lands and Reserves Policy and the Land Use Bylaw at no cost to the Municipality (note that while the Municipality has jurisdiction to close a Municipal Reserve, the jurisdiction to close a road or a lane or portion thereof ultimately lies with the Minister of Transportation).
- 2.6 An Encroachment Agreement between the Municipality and the Owner shall be registered at the Alberta Land Titles Office by caveat, subject to the Owner paying the applicable fees.
- 2.7 An application for an Encroachment Agreement onto Municipal Lands must be accompanied by:
- 2.7.1 An original Real Property Report no older than fifteen (15) years showing the encroachment;
  - 2.7.2 The encroachment application fee and the encroachment agreement fee set in the Fees, Rates and Charges Bylaw;
  - 2.7.3 Date-stamped photograph(s) of the encroachment; and
  - 2.7.4 If the Owner holds a copy thereof, the development permit issued for the improvement or proof that a development permit is not presently required or was not required at the time that the improvement was placed.
- 2.8 Encroachment application review:
- 2.8.1 An application for an Encroachment Agreement will be reviewed and considered on its own merit in consultation with affected Municipality Departments and pursuant to the Council approved Encroachment Policy.
  - 2.8.2 An encroachment application, either for an encroachment onto adjacent private property or onto Municipal Lands, for an improvement that does not have the benefit of a development permit (except if a development permit is not presently required or was not required at the time that the improvement was placed) shall not be processed until the application is accompanied by an application for a development permit.
  - 2.8.3 If the Development Authority refuses the development permit application, the Municipality shall refuse the application for an Encroachment Agreement and the Owner shall be required to pursue the alternatives available in clause 2.5 of this Procedure.
  - 2.8.4 If an application for an Encroachment Agreement is deemed acceptable by the Municipality, the Development Officer will:

- a) provide to the Owner an Encroachment Agreement and assist the Owner to execute the agreement, and
- b) ensure that the Municipality executes the agreement and receives the first annual lease fee, and
- c) register the agreement by caveat on the affected private property and, if applicable, Municipal Lands.

2.8.5 If an application for an Encroachment Agreement is refused:

- a) the Development Officer shall notify the Owner in writing or as otherwise agreed; and
- b) the Owner shall, within 30 days of receiving the notice of refusal or such other date as may be set by the Development Officer, either:
  - (i) remove the encroachment from the Municipal Lands, or
  - (ii) alter the encroachment to the Municipality's satisfaction, or
  - (iii) make an application for subdivision to correct the encroachment;

or

- c) subject to paragraph 2.12.4 below the Owner may, within 30 days of receiving the notice of refusal, appeal to Council pursuant to clause 2.12, except when the application for an Encroachment Agreement was refused because the Development Authority had refused the accompanying development permit, in which case there is no right of Appeal to Council. The Owner would have to appeal the refusal of the development permit, and if that was successful, may re-apply for an Encroachment Agreement.

2.9 The Encroachment agreement shall stipulate:

- 2.9.1 The term of the encroachment agreement and its non-transferability, as determined pursuant to the Council approved Encroachment Policy.
- 2.9.2 The annual lease fee amount as determined pursuant to the Council approved Encroachment Policy and the Fees, Rates and Charges Bylaw.
- 2.9.3 That, at the termination of the agreement, the encroachment shall be removed within the time required by the Municipality and at no cost to the Municipality.
- 2.9.4 That the encroachment shall not be enlarged, structurally altered, added to, or rebuilt, except for routine maintenance, or extended beyond the bounds of the current encroachment.
- 2.9.5 That, notwithstanding its authorization pursuant to the agreement, the encroachment shall be removed at no cost to the Municipality when the Municipality or its agents determine that it is necessary for the operation, repair or maintenance of public infrastructure.
- 2.9.6 That, notwithstanding any other provisions of this Procedure or the agreement, the Municipality reserves the right to terminate the agreement and require the Owner to remove the encroachment at no

cost to the Municipality in the event that the encroachment could affect or be affected by future plans for utilities or road widening, or other requirements that may apply at the time including but not limited to public safety, public access, the use and enjoyment of Municipal Lands or adjacent private property, the operation or maintenance of infrastructure, or the effective provision of public services.

- 2.9.7 That the encroachment shall not be rebuilt or replaced in the same location once it has been removed, demolished, or destroyed by forces of nature.
- 2.10 The authorization of an encroachment, whether through the exemptions listed in **Schedule A** of this Procedure or through an encroachment agreement, does not relieve an Owner from the responsibility to determine and comply with all applicable federal, provincial, and municipal statutes, regulations, orders, bylaws, and policies.
- 2.11 All expenses, costs, liabilities, or other risk associated with an authorised encroachment shall be borne by the Owner(s).
- 2.12 Right of Appeal:
- 2.12.1 Subject to paragraph 2.12.4 below, when an Encroachment application was refused by Administration, the Owner may appeal in writing to Council by requesting a review of the Administration's decision, except when the application for an Encroachment Agreement was refused because the Development Authority had refused the accompanying development permit, in which case there is no right of Appeal to Council. The Owner would have to appeal the refusal of the development permit, and if that was successful, may re-apply for an Encroachment Agreement.
- 2.12.2 An appeal must be accompanied by:
- a) A copy of the application for an Encroachment Agreement;
  - b) A copy of the notice of refusal; and
  - c) Reasons why the encroachment should be approved.
- 2.12.3 Council's decision shall be final and binding to both parties.
- 2.12.4 Notwithstanding paragraph 2.12.1 above, when Administration presented an Encroachment application to Council for consideration and Council refused it, the Owner shall not have the right to appeal to Council.
- 2.13 Enforcement
- 2.13.1 When an Owner is made aware of the existence of an encroachment onto Municipal Lands, or when an application for an encroachment agreement was refused and an appeal to Council was lost, or a subdivision application was refused and a subsequent appeal to correct the encroachment was lost, the Owner shall remove or alter the encroachment from the affected

Municipal Lands within 30 days of receiving notice of the refusal or such other date as may be set by the Development Officer, at no cost to the Municipality.

- 2.13.2 If the Owner fails to remove or alter the encroachment or to apply for its authorisation under this Procedure, the Municipality may take enforcement action to remove or alter the encroachment and seek reimbursement from the Owner for all associated costs, in accordance with the Municipal Government Act.

#### Encroachment onto Private Property and Municipality as Third Party

2.14 When it is determined that a building, structure, or other improvement encroaches onto adjacent private property, the Owner shall:

- 2.14.1 Apply for a development permit as may be required and if successful, enter into an encroachment agreement with the adjacent private landowner and provide a copy of the fully executed agreement to the Development Officer, or
- 2.14.2 Remove or relocate the encroaching improvement through the appropriate applications to the Municipality to bring the property into compliance with the current Land Use Bylaw, or
- 2.14.3 Correct the encroachment by obtaining subdivision approval for a boundary adjustment, redistricting approval, and development permit as may be required, and by purchasing the required portion of private property, all of which shall be at no cost to the Municipality.

2.15 An encroachment agreement between private landowners shall include the Municipality as a third party, with the claim of interest being that the Municipality has management and control over developments on the affected properties through the Land Use Bylaw.

#### Invoicing of the Annual Encroachment Lease Fee

2.16 The Development Officer shall notify the Taxes and Utilities Clerk of all encroachment agreements that are subject to an annual lease fee.

2.17 Annually, the Taxes and Utilities Clerk shall invoice the Grantee of an encroachment agreement for the annual lease fee.

#### Encroachment onto Municipal and Environmental Reserves


2.18 An encroachment onto a Reserve parcel is prohibited, except to the extent that is accommodated without an encroachment agreement pursuant to **Schedule A**.

2.19 Reserve parcels are not subject to this Procedure 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.

### 3.0 Approval

Department Manager: Johan van der Bank Date: December 11, 2023  
(print name)

  
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(signature)

### 4.0 End

See **SCHEDULE A** attached.



## SCHEDULE A

Subject to clause 2.4 of this Procedure, and further subject to review by and at the sole discretion of the Development Officer in consultation with the Transportation department and the Utilities department, the following encroachments are authorized to exist in the Municipality of Crowsnest Pass without an encroachment agreement:

### **ENCROACHMENTS ONTO THE RIGHT-OF-WAY OF A STREET OR LANE (but not onto the driving surface)**

- a) A private structure that provides direct access to a property pursuant to the Land Use Bylaw and the Engineering and Development Standards, including:
  - i. a driveway providing access to/from a public street,
  - ii. a sidewalk from a public street onto a property,
  - iii. a special needs access (ramp, elevator, fire escape, etc.),
  - iv. steps that provide access to a building.
  
- b) A driveway which accesses a lane:
  - i. which is constructed of asphalt, gravel, shale or concrete or other like material and which encroaches not more than 0.3 meters into a gravel lane,
  - ii. which is hard surfaced, and which encroaches into a hard surfaced (asphalt or concrete) lane.
  
- c) A fence:
  - i. encroaching not more than 0.3 meters where the fence creates an enclosure, provided that the total enclosed area of encroachment from the subject property may not exceed 4.6 m<sup>2</sup>,
  - ii. encroaching to the back of the public sidewalk or to 1.0 meters from the public street curb (if there is no sidewalk), where the fence is a linear projection (and not an enclosure) of a fence on the subject private property,
  - iii. a temporary developer fence required under a development agreement running parallel to a pathway (which run over a property line) may encroach 0.3 meters subject to minimum access requirements.
  
- d) A portable accessory building or structure:
  - i. A shed under 10m<sup>2</sup> and encroaching not more than 0.3 meters,
  - ii. An animal-proof garbage container and an associated concrete pad (in a street only, not in a lane).

- e) A retaining wall:
  - i. not more than 0.2 meters in height, and set back a minimum of 2.0 meters from above grade utilities and infrastructure.
  
- f) A temporary surface improvement including:
  - i. a movable landscaping planter and movable landscaping border material (e.g., rocks, plastic, concrete, timber - under 0.2 meters in height);
  - ii. natural landscaping including sod, seed, and planted landscaping such as shrubs and other low-level landscaping but excluding trees and other deep-rooted vegetation;
  - iii. surface level landscape rocks not more than 0.3 meters in height;
  - iv. at-grade paving blocks or a concrete platform.
  
- g) Other:
  - i. An eave that encroaches not more than 0.46 m (1.5 ft) and has an eavestrough and downspout directing drainage towards a municipal street or lane, provided the building wall is entirely within the subject private property.
  - ii. At the sole discretion of the Development Officer, a sign or any other structure or object that does not restrict sight lines and does not prevent or restrict public access, thoroughfare and/or use of Municipal Lands, and does not affect public safety or municipal operations.

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

- a) a surface vehicle driveway and/or parking area;
- b) a surface pedestrian sidewalk and/or walkway;
- c) sod, seed, and planted landscaping such as shrubs and other low-level landscaping but excluding trees and other deep-rooted vegetation;
- d) a fence running through a utility right-of-way bisected by a property line;
- e) a portable accessory building under 10 m<sup>2</sup> and encroaching not more than 0.3 meters;
- f) a retaining wall not more than 0.2 meters in height and set back a minimum of 2.0 meters from above grade utilities and infrastructure;
- g) temporary surface improvements including:
  - i. movable landscaping planters and movable landscaping border material (e.g., rocks, plastic, concrete, timber - under 0.3 meters in height);
  - ii. surface level landscape rocks not more than 0.5 meters in height;

- iii. an animal-proof garbage container and an associated concrete pad;
- h) An eave that encroaches not more than 0.46 m (1.5 ft) and has an eavestrough and downspout directing drainage towards a municipal street or lane, provided the building wall is entirely within the subject private property.

**ENCROACHMENTS ONTO A RESERVE PARCEL OR OTHER MUNICIPAL PROPERTY**

- a) A fence where the fence is a linear projection (and not an enclosure) of a fence on the adjacent private property, and does not prevent or restrict public access into or through the reserve parcel.
- b) A retaining wall not more than 0.2 meters in height and set back a minimum of 2.0 meters from above grade utilities and infrastructure and does not prevent public access to the reserve parcel.
- c) An eave that encroaches not more than 0.46 m (1.5 ft) and has an eavestrough and downspout directing drainage towards a municipal street or lane, provided the building wall is entirely within the subject private property.