

Encroachments onto Lands in which the County holds an Interest

Date Approved by Council: **05/06/2003**

Resolution No: **393/2003**

Lead Role: **Chief Commissioner**

Replaces: **SER-012-006**

Last Review Date: **05/2003**

Next Review Date: **05/2006**

Administrative Responsibility: **Planning and Development Services**

Policy Statement

The County shall, at its sole discretion, authorize encroachments which have occurred onto County property or a County Easement/Right-of-Way through the execution of a written agreement with the infringing party or the issuance of a Consent Letter (where appropriate).

Definitions, guidelines and / or Procedures

1.0 Purpose

The County shall evaluate encroachments onto lands in which the County holds an interest or is subject to the direction, control, and management of the County (the "Subject Lands") to determine the necessity and feasibility of executing a written agreement with the infringing party or issue a Letter of Consent (where appropriate) to protect the County's rights and obligations with respect to the Subject Lands and to minimize the County's exposure to liability with respect to these encroachments failing which the County may require removal of the encroachment(s). The County shall endeavor to maintain a records system regarding such encroachments onto the Subject Lands.

2.0 Authorization

2.1 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.

2.2 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.

2.3 The Council hereby delegates the authority to implement this Policy to the Chief Commissioner and his delegate, the Coordinator, Land Management Services.

3.0 Definitions

3.1 "Amending (Encroachment) Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations in which a structure is to be permitted over an existing easement or right-of-way area.

3.2 "Amending (Utility Right-of-Way Drainage) Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations in which a structure is to be permitted over an existing easement or utility right-of-way area constructed or utilized for drainage purposes.

3.3 "Applicant" - Any party who has encroached onto lands in which the County holds an interest or is subject to the direction, control, and management of the County.

3.4 "Consent Letter for Minor Encroachments" - The County's standard form of letter attached, as amended from time to time in accordance with this Policy, for situations in which the Coordinator, Land Management Services, or his designate, determines, at his sole discretion, whether an Encroachment is of a minor nature such that an Agreement is not required.

3.5 "Encroachments" - An illegal intrusion onto lands (including a structure, improvement, or use) in which the County holds an interest or is subject to the direction, control, and management of the County.

3.6 "Franchisee" - Any utility or service company authorized by agreement with the County or by statute to use and/or occupy utility right-of-ways held by the County which include, but are not limited to Telus, Shaw Cable, Atco and Aquila.

3.7 "License Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations where there are two titled parcels of lands and a use is permitted over one parcel (or portion thereof). One of the parcels of land may be designated as a municipal reserve, public utility lot or municipally owned land.

3.8 "Plan of Survey" - such plan, survey, diagram or document as may be acceptable

to the Coordinator, Land Management Services including, but not limited to, a Real Property Report prepared by a registered Alberta Land Surveyor.

3.9 "Road Encroachment Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations in which a structure is to be permitted over a road.

3.10 "Road License Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations where a particular use is to be permitted over a road under the direction, control and management of the County.

3.11 "Traditional Encroachment Agreement" - The County's standard form of Agreement, as amended from time to time in accordance with this Policy, for situations where there are two titled parcels of land and where there is a structure encroaching upon one parcel of land.

3.12 "Utility Right-of-Way" - a right granted on, over, or under land to the County for the purpose of constructing and/or maintaining a public utility.

4.0 Responsibilities

4.1 The Chief Commissioner and his delegate, the Coordinator, Land Management Services are hereby authorized to revise the standard form of Agreements and Letters referred to in this Policy as may be required from time to time.

4.2 The responsibilities of the Coordinator, Land Management Services include:

4.2.1 To receive, evaluate and respond to all requests for encroachments onto lands in which the County holds an interest or is subject to the direction, control, and management of the County.

4.2.2 To evaluate these requests in accordance with this Policy.

4.2.3 To prepare and execute all necessary documentation to allow the encroachment (where applicable).

4.2.4 To ensure that the appropriate documentation is registered at the Land Titles Office (where applicable).

4.2.5 To maintain an inventory of all documentation relating to Encroachments evaluated by the County.

4.3 The responsibilities of the County's Planning and Development Services Department include:

4.3.1 To advise any Applicants of the County's process regarding the evaluation of Encroachments and provide a listing of Franchisees for the Applicant to contact.

4.3.2 To consider the execution of encroachment agreements or other authorizing documentation in this Policy as part of its review process with

respect to the issuance of letters of compliance and development permits on properties where Encroachments exist.

4.4 The responsibilities of the Council of Strathcona County include:

4.4.1 To approve any amendments to this Policy if necessary.

4.4.2 To consider appeals referred to in this Policy.

5.0 For Encroachments onto County Easements or Utility Right-of-Ways:

5.1 The Applicant will submit to the Planning and Development Services Department particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information the Planning and Development Services Department requires (the "Application").

5.2 The Applicant shall contact all Franchisees operating in the general area to obtain their written comments or written consent to the County to allow the Encroachment onto the County's Utility Right-of-Way.

5.3 Once these consents and/or comments are received by Planning and Development Services, the Application will be reviewed by the Coordinator, Land Management Services, or his designate, as to whether the County will grant its consent to the Encroachment. If the Applicant is unable to obtain the consent of the Franchisee for the Encroachment, then the process detailed in Section 6.0 will be followed.

5.4 If the County grants the encroachment, then the Coordinator, Land Management Services will prepare an Amending (Encroachment) Agreement. This Agreement will then be forwarded to the applicant for review, execution and return to the County for further processing.

5.5 Upon approval of the Amending (Encroachment) Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the Amending (Encroachment) Agreement.

5.6 Upon the full execution of the Amending (Encroachment) Agreement, Planning and Development Services will take the necessary steps to register the Agreement at the Land Titles Office.

6.0 Non-Consent to Encroachment by Franchisee

6.1 If for any reason a Franchisee is not prepared to grant their consent to an Encroachment, then the Coordinator, Land Management Services may discuss the matter with the Franchisee and consult the County Engineer on the substance of the object to the Encroachment. If resolution to the objection cannot be determined, then the Coordinator, Land Management Services, will prepare a recommendation and background report to the Executive Team on the granting of the Encroachment.

6.2 If, notwithstanding the non-consent of the Franchisee, the Executive Team

makes a decision to grant the Encroachment, then the Coordinator, Land Management Services will notify the Franchisee of the County's decision to grant the Encroachment and advise that they have seven (7) days from the date of notification to appeal the decision to the Council of Strathcona County. At the expiration of seven (7) days, if no appeal is received, then the Coordinator, Land Management Services will follow the process in Sections 5.4, 5.5, and 5.6.

6.3 If the Executive Team does not allow the Encroachment, then the Coordinator, Land Management Services will notify the Applicant of the County's decision. The Applicant will have seven (7) days from the date of notification to appeal the decision to the Council of Strathcona County.

7.0 For Encroachments onto County Easements or Utility Right-of-Ways Involving Drainage Matters:

7.1 The Applicant will submit to Planning and Development Services particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information Planning and Development Services requires (the "Application").

7.2 Upon receipt of a completed application, the Application will be reviewed by the Coordinator, Land Management Services, or his designate as to whether the County will grant its consent to the Encroachment.

7.3 If the County grants the Encroachment, then the Coordinator, Land Management Services will prepare an Amending (Utility Right-of-Way Drainage) Agreement. This Agreement will then be forwarded to the Applicant for review, execution and return to the County for further processing.

7.4 Upon approval of the Amending (Utility Right-of-Way Drainage) Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the Amending (Utility Right-of-Way Drainage) Agreement.

7.5 Upon the full execution of the Amending (Utility Right-of-Way Drainage) Agreement, Planning and Development Services will take the necessary steps to register the Agreement by way of caveat at the Land Titles Office.

8.0 Encroachments onto Roads and Road Allowances

8.1 Encroachment (structure) over a Road or Road Allowance

8.1.1 For Encroachments of a structure onto a road or road allowance under the direction, control and management of the County, the Applicant will submit to Land Management Services, particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information Planning and Development Services requires (the "Application").

8.1.2 Upon receipt of a completed application, the Application will be reviewed by the Coordinator, Land Management Services, or his designate as to whether the County will grant its consent to the Encroachment.

8.1.3 If the County grants the encroachment, then the Coordinator, Land Management Services will prepare a Road Encroachment Agreement. This Agreement will then be forwarded to the Applicant for review, execution and return to the County for further processing.

8.1.4 Upon approval of the Road Encroachment Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the Road Encroachment Agreement.

8.1.5 Upon the full execution of the Road Encroachment Agreement, Planning and Development Services will take the necessary steps to register the Agreement by way of caveat at the Land Titles Office.

8.2 Encroachments (Use) over a Road or Road allowance

8.2.1 For situations involving a particular use to be permitted over a road or road allowance under the direction, control and management of the County, the Applicant will submit to Planning and Development Services Department particulars of the Encroaching Use including the legal description of the lands upon which the Encroaching Use exists, a Plan of Survey detailing the Encroachment and any other information Planning and Development Services requires (the "Application").

8.2.2 Upon receipt of a completed application, the Application will be reviewed by the Coordinator, Land Management Services, or his designate as to whether the County will grant its consent to the Encroaching Use.

8.2.3 If the County grants the Encroaching Use, then the Coordinator, Land Management Services will prepare a Road License Agreement. This Agreement will then be forwarded to the Applicant for review, execution and return to the County for further processing.

8.2.4 Upon approval of the Road License Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the Road License Agreement.

8.2.5 Upon the full execution of the Road License Agreement, Planning and Development Services will take the necessary steps to register the Agreement by way of caveat at the Land Titles Office.

9.0 Encroachments onto Municipal Reserves, Public Utility lots or

County-owned Land

9.1 Encroachment (structure) over Municipal Reserves, Public Utility lots or County-owned Land

9.1.1 For Encroachments of a structure onto Municipal Reserves, Public Utility lots or County-owned Land, the Applicant will submit to Planning and Development Services Department particulars of the Encroachment including the legal description of the lands upon which the Encroachment exists, a Plan of Survey detailing the Encroachment and any other information Land Management Services requires (the "Application").

9.1.2 Upon receipt of a completed application, the Application will be reviewed by the Coordinator, Land Management Services, or his designate as to whether the County will grant its consent to the Encroachment.

9.1.3 If the County grants the Encroachment, then the Coordinator, Land Management Services will prepare a Traditional Encroachment Agreement. This Agreement will then be forwarded to the Applicant for review, execution and return to the County for further processing.

9.1.4 Upon approval of the Traditional Encroachment Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the Traditional Encroachment Agreement.

9.1.5 Upon the full execution of the Traditional Encroachment Agreement, Planning and Development Services will take the necessary steps to register the Agreement by way of caveat at the Land Titles Office.

9.2 Encroachments (Use) over Municipal Reserves, Public Utility lots or County-owned Land

9.2.1 For situations involving a particular use to be permitted over Municipal Reserves, Public Utility lots or County-owned Land, the Applicant will submit to Planning and Development Services Department particulars of the Encroaching Use including the legal description of the lands upon which the Encroaching Use exists, a Plan of Survey detailing the Encroachment and any other information Planning and Development Services requires (the "Application").

9.2.2 Upon receipt of a completed application, the Application will be reviewed by the Coordinator, Land Management Services, or his designate as to whether the County will grant its consent to the Encroaching Use.

9.2.3 If the County grants the Encroaching Use, then the Coordinator, Land Management Services will prepare a License Agreement. This Agreement will then be forwarded to the Applicant for review, execution and return to the County for further processing.

9.2.4 Upon approval of the License Agreement by the Coordinator, Land Management Services, the proper signing officers are thereby authorized and empowered to sign and seal the License Agreement.

9.2.5 Upon the full execution of the License Agreement, Planning and Development Services will take the necessary steps to register the Agreement by way of caveat at the Land Titles Office.

10.0 Non-Approval of Encroachment or Encroaching Use

10.1 If permission for the Encroachment of a structure or an Encroaching Use is denied, then the Coordinator, Land Management Services may issue a written notice to the property owner for immediate removal of the Encroachment and/or the cessation of the Encroaching Use.

10.2 If the Encroachment is not removed or the Encroaching Use has not ceased within sixty (60) days, the Coordinator, Land Management Services may take advantage of whatever legal remedies are available to the County to ensure the removal of the Encroachment or cessation of the Encroaching Use.

11.0 Minor Encroachments

11.1 Notwithstanding any other section in this Policy, the Coordinator, Land Management Services, or his designate, shall have the sole discretion to determine if an Encroachment is of such a minor nature that the County will issue a Consent Letter to the Applicant for the encroachment rather than require the execution of an Agreement.

12.0 Fees

12.1 If the Encroachment or Encroachment Use is allowed by the County, the Applicant will be responsible for the fees established by the Council of the County from time to time.