

ENCROACHMENT AGREEMENTS

Date Issued: December 7, 2017

Mandated by: City Manager

Current Revision: December 7, 2017

Cross Reference:

- Encroachment Agreements Procedure
GEN-025-A

Next Review: January 1, 2019

Responsibility:
Director, Planning & Development

PURPOSE

The City requires a coordinated and consistent approach for the processing of Encroachment Agreements to ensure protection of all parties' interests with a fair and equitable procedure.

POLICY

The City shall review each request for encroachment on its own merit. No precedent shall be set by previous agreements or for following agreements.

DEFINITIONS

City – shall mean the City of Fort Saskatchewan.

City Land – shall mean land owned by the City.

Easement – shall mean the land owned by one party (registered against the Land Title) that grants access to another party (typically right-of-ways).

Encroachment - shall mean to infringe upon the boundaries of an adjacent property.

Encroachment Agreement – shall mean an agreement which permits an encroachment onto City Land or City Easement.

Encroachment Area – shall mean the length multiplied by width or any other means of calculating the area that is encroaching onto City Land or City Easement.

Registered Owner – shall mean the person(s) shown as owner(s) of land as verified on the City's Assessment Roll and a current Land Title document from Service Alberta.

Reserve – shall mean the legally described suffix of, but not limited to environmental reserve, municipal reserve or school reserve.

GUIDING PRINCIPLES

The City may require an encroachment onto City Land to be either removed or authorized through an Encroachment Agreement entered into with the registered owner.

The City may refuse to issue an Encroachment Agreement when there are outstanding issues, orders or any other regulative infractions deemed related or until they are resolved.

The City cannot authorize an Encroachment onto a parcel registered as “Reserve”. The registered owner will be directed to remove the Encroachment Area.

Encroachments on privately owned lands are deemed to be a private matter between the affected registered owners.

AUTHORITY / RESPONSIBILITY TO IMPLEMENT

The City Manager delegates responsibility to the Director, Planning & Development to ensure the uniform application of this Policy within the organization and in accordance with legislative requirements.

Original signed by Troy Fleming
City Manager

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PURPOSE

The City requires a coordinated and consistent approach for the processing of Encroachment Agreements to ensure protection of all parties' interests with a fair and equitable procedure.

DEFINITIONS

Applicant – shall mean the registered owner as shown on the Land Title or representative acting on their behalf.

Building – shall mean anything constructed or placed on, in, over, or under land but does not include a highway, road or bridge.

Caveat – shall mean the legal instrument registering an interest in the land.

City – shall mean the City of Fort Saskatchewan.

City Land – shall mean the land owned by the City of Fort Saskatchewan.

Compliance Certificate – shall mean a letter or stamp verifying compliance or non-compliance with the current City Land Use Bylaw based on a Real Property Report.

Easement – shall mean the land owned by one party (registered against the Land Title) that grants access to another party. Typically includes right-of-ways.

Encroachment Agreement – shall mean an agreement which permits an encroachment onto City Land.

Encroachment Area – shall mean the length multiplied by width or any other means of calculating the area that is encroaching onto City Land or Easement.

Land Title – shall mean the Land Title document identifying the current owner and showing all registered interests in the land.

Real Property Report (RPR) – shall mean the survey plan locating buildings in relation to the boundaries of a legal lot.

Reserve – shall mean the legally described suffix of, but not limited to environmental reserve, municipal reserve or school reserve.

Setback – shall mean the distance that a Building shall be set back from the lot line or any other features on a site as specified in the current Land Use Bylaw.

PROCEDURE

The need for an Encroachment Agreement is typically identified through the preparation of a Compliance Certificate, but can be identified through other means. An Encroachment Agreement is not a development permit or a building permit.

1 Application:

- 1.1 The Applicant or their representative (with Applicant's written authorization unless submitted by a lawyer acting on behalf of the Applicant) may apply to the City for an Encroachment Agreement.
- 1.2 The names of the Applicant(s) on the day that the Encroachment Agreement will be registered with Land Titles, shall be stated on the Encroachment Agreement.
- 1.3 Payment according to the City's current Fees and Charges Bylaw is required at time of submission. Fees are non-refundable.
- 1.4 Encroachments on privately owned lands are deemed to be a private matter between the affected registered owners.

2 Review:

- 2.1 The City may conduct an on-site inspection of the subject property, pursuant to the request for an Encroachment Agreement.
- 2.2 An Encroachment Agreement request shall be reviewed by City departments to provide direction as to whether the Encroachment Area may remain.
- 2.3 An Encroachment Area onto an Easement that grants access for the City will be reviewed to determine whether the Encroachment Area shall be removed.
- 2.4 An Encroachment Area onto an Easement representing interests from parties other than the City, will require the Applicant or their representative to contact the owner/operator of the Easement for their requirements, which shall be entered into the City property file.
- 2.5 The City is not liable for any inaccuracies in the RPR or inaccuracies in other information submitted in support of a request for an Encroachment Agreement.

3 Approval or Refusal Process:

- 3.1 Once the Encroachment Agreement is approved it is then forwarded to the Applicant or their representative for signature(s).

- 3.2 Once signed, the Applicant returns the Encroachment Agreement to the City for official signatures.
- 3.3 The fully signed Encroachment Agreement is then sent to the Applicant or their representative to be registered on the Land Title.
- 3.4 The Applicant or their representative shall provide a copy of the Land Title evidencing that the Encroachment Agreement has been registered.
- 3.5 The City may refuse, in writing, to issue an Encroachment Agreement that may negatively affect the interests of the City.
- 3.6 The City may refuse, in writing, to issue an Encroachment Agreement that would misappropriate the lands for the exclusive use of the private property and deny the public the use and enjoyment of the lands.
- 3.7 The City may refuse, in writing, to issue an Encroachment Agreement when there are outstanding issues, orders or any other regulative infractions deemed related.
- 3.8 The City may refuse, in writing, to issue an Encroachment Agreement when in their opinion, there is insufficient information to determine if the Buildings shown on the RPR are correct.

4 Remedies:

- 4.1 The Applicant can remove the Encroachment Area and restore the lands. They shall provide the City with signed Affidavit or updated RPR evidencing the encroachment has been removed.
- 4.2 The Applicant or their representative may then request an updated Compliance Certificate, as per the Compliance Policy PD-001.
- 4.3 The City cannot authorize an Encroachment onto a parcel registered as Reserve. The Applicant will be directed to remove the Encroachment Area and restore the lands.