

Policy Title: ENCROACHMENTS
Policy # F-008
Effective Date: September 25, 2013
Adopted by Council Resolution # 145/13

POLICY STATEMENT

The Jasper Community Sustainability Plan requires the municipality to take active steps to remove encroachments on municipal lands. (Part 3, 3.5 p.68)

The Municipality realizes private encroachments on Municipality of Jasper property and easements exist and will continue to be discovered, and has established this policy as a result. The municipality administers or uses a variety of parcels of land including streets and open spaces and also has interests in land by way of easements.

On behalf of the residents of Jasper, the municipality must ensure that encroachments do not adversely affect these lands and easements or the municipality's ability to maintain effective services or restrict public access and enjoyment of land for public use.

Encroachments are required to be removed unless authorized by an encroachment agreement or expressly permitted by this policy.

REASON FOR POLICY

This policy will assist the public and enable the municipality to manage encroachments effectively. It is intended to provide a more consistent approach in processing applications, enforcing the policy, and protecting and indemnifying the municipality wherever encroachments have been identified.

RESPONSIBILITIES

Council to:

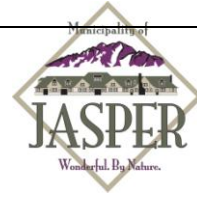
1. Approve by resolution this policy and any amendments
2. Consider the allocation of resources for successful implementation of this policy in the annual budget process.
3. To deal with those matters referred to it by this policy in any manner it believes are warranted.
4. To act as a body of last resort for matters requiring variance or relaxation from this policy.

Chief Administrative Officer to:

1. Implement this policy and approve procedures.
2. Ensure policy and procedures reviews occur and verify the implementation of policies and procedures.

Director of the Department to:

1. Ensure implementation of this policy and procedure including securing the removal of all unauthorized encroachments.
2. Ensure that this policy and procedure is reviewed at a minimum every five years.
3. Make recommendations to the Chief Administrative Officer of necessary policy or procedure amendments.



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4. To receive, review, and respond to all requests for encroachments onto municipal streets and rights of way and municipal land (parks and open spaces)
5. To prepare and have executed encroachment agreements.
6. To maintain an inventory of all agreements and encroachments onto streets, municipal land and rights of way.
7. To receive complaints about alleged encroachments.

Supervisor to:

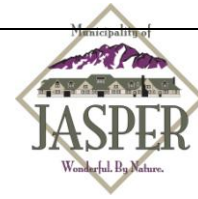
1. Understand and adhere to this policy and procedures.
2. Ensure employees are aware of this policy and procedures.
3. To advise any applicants of the process required for obtaining municipal consent for encroachment and provide listing of contact people of franchisees.
4. To issue letters of compliance where encroachments exist once proof of registration of an encroachment agreement or licence of occupation is provided.

All employees to:

1. Understand and adhere to this policy.

1.0 DEFINITIONS

- 1.1 "*Council*" means the Council of the Specialized Municipality of Jasper;
- 1.2 "*developer fence*" means a fence installed under a subdivision or development agreement;
- 1.3 "*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 municipality.
- 1.4 "*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 planning authority) that extends on, over or under municipal lands and shall include, but is not limited to the following:
 - 1.4.1 buildings and all projections (including eaves, cantilevers, etc.) and siding,
 - 1.4.2 sheds (including those attached to a dwelling or a fence or both),
 - 1.4.3 fences,
 - 1.4.4 asphalt, concrete or brick sidewalks, curbs, parking pads, aprons or driveways,
 - 1.4.5 structures (including decks, stairs and patios),
 - 1.4.6 retaining walls, and extension of adjacent lands by fill,
 - 1.4.7 swimming pools and hot tubs,
 - 1.4.8 shrubs, trees or other organic landscape materials planted in reserves or municipally owned parcels,
 - 1.4.9 hard landscaping (including, but not limited to, retaining walls, structures, fire pits and planters),
 - 1.4.10 light standards, and
 - 1.4.11 signs;



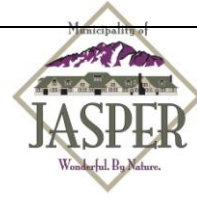
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- 1.5 "*encroachment agreements*" means an agreement (including a licence of occupation or an agreement amending an existing utility right-of-way) between the applicant and the municipality authorizing an encroachment and shall, among other things, include:
 - 1.5.1 location and identification of the encroachment,
 - 1.5.2 term,
 - 1.5.3 termination notice,
 - 1.5.4 cost and liability for repair and removal,
 - 1.5.5 indemnification of the municipality, its agents or licensees, and
 - 1.5.6 a provision requiring removal upon notice given by the municipality;
- 1.6 "fence" means a vertical physical barrier constructed to provide visual screening or to prevent unauthorized access or both;
- 1.7 "leaseholder" shall mean a grantee or a person or other legal entity holding a valid lease or licence of occupation with the federal Crown for the use or occupation of land in Jasper National Park, and shall mean Canadian National Railway in respect to lots or land parcels held by Canadian National Railway, and shall mean Jasper National Park of Canada with respect to lots or land parcels held by the Crown;
- 1.8 "*measurements*" shall take into consideration errors introduced by survey measurements. For the purpose of determining compliance with this policy with respect to the location of encroachments, measurements shall be rounded off to one significant figure (i.e., a survey measurement between 0.25 metres and 0.39 metres would be rounded to 0.4 metres.)
- 1.9 "*minister*" includes any member of the Queen's Privy Council for Canada, designated by the Governor in Council as the minister for purposes of the Canada National Parks Act, or their designate.
- 1.10 "*municipal land*" means land held, controlled or used by the municipality by lease, licence of occupation, land use agreement or other agreement with the Government of Canada or Jasper National Park of Canada and includes collectively or individually a street, easement, open space or municipal parcel;
- 1.11 "*municipal parcel*" is any land the municipality holds, controls or uses excluding an open space, street or easement;
- 1.12 "*property owner*" means the leaseholder of land adjacent to municipal land or the leaseholder of land encumbered by an easement, who has required or may require an encroachment agreement on the said municipal land or easement;
- 1.13 "*street*" means any thoroughfare, highway, road, trail, avenue, viaduct, lane, alley, square, bridge, causeway, trestle, walkway or other place, which are lands



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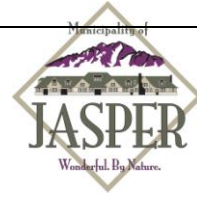
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administered by the municipality, any part of which the public is entitled or permitted to use, including any utility corridor or right of way;

- 1.14 "utility" means any one or more of the following:
- 1.14.1 systems for the distribution of gas, whether artificial or natural, electricity, telephone, cable television and oil products,
 - 1.14.2 facilities for storage, transmission, treatment, distribution or supply of water,
 - 1.14.3 facilities for the collection, treatment, movement or disposal of sanitary sewage, including pumping stations,
 - 1.14.4 storm water drainage facilities, including collection, treatment, pumping stations, storm water ponds, and wetlands, or
 - 1.14.5 any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

2.0 PROHIBITION OF ENCROACHMENTS

- 2.1 Encroachments shall in no case be permitted:
- 2.1.1 to exceed 0.3 metres into a street, open space or easement,
 - 2.1.2 adjacent to or located on a municipal parcel with an overhead electrical line,
 - 2.1.3 on an emergency access easement, or
 - 2.1.4 in the Cabin Creek riparian area extending for a distance of 30 metres from the high water mark. (Map attached at Schedule A)
- 2.2 Encroachments, except those meeting the criteria outlined in Schedule B, are not permitted unless they are authorized by an encroachment agreement.
- 2.3 All unauthorized encroachments are required to be removed.
- 2.4 No encroachment created after November 1, 2011 may be authorized unless the property owner secures written municipal agreement prior to the creation of the encroachment and the encroachment meets the criteria outlined in Schedule B. All other encroachments created after November 1, 2011 are required to be removed.
- 2.5 The following are not encroachments:
- 2.5.1 a pathway extending across municipal land from the property line of a leasehold to a public sidewalk, and which met Parks Canada development requirements at the time of its construction,
 - 2.5.2 a driveway extending across municipal land from the property line of a leasehold to a street, and which met Parks Canada development requirements at the time of its construction,
 - 2.5.3 utilities located on municipal land, authorized by the municipality.



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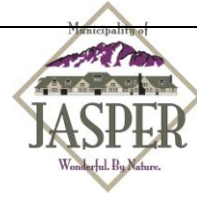
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3.0 COMMON PROVISIONS

- 3.1 Where an encroachment is identified, except one meeting the criteria outlined in Schedule A, the property owner shall apply to the municipality for authorization. If within:
 - 3.1.1 a street, it will be reviewed by all affected municipal departments and any affected utility,
 - 3.1.2 an open space, it will be reviewed by all affected municipal departments; it will require removal unless other alternatives are identified consistent with this policy,
 - 3.1.3 a municipal parcel, it will be reviewed by all affected municipal departments and any affected utility,
 - 3.1.4 an easement or utility right-of-way, it will be reviewed by all affected municipal department and any affected utility.
- 3.2 An application for authorization shall include:
 - 3.2.1 a copy of a Real Property Report detailing the property and the extent of the encroachment,
 - 3.2.2 a copy of the title to the parcel (if applicable),
 - 3.2.3 the application fee,
 - 3.2.4 photographs of the encroachment, and
 - 3.2.5 a cover letter setting out the circumstances that led to the application.Upon receipt of items 3.2.1 to 3.2.5, processing will be commenced by the municipality.
- 3.3 All expenses, costs, liabilities, or other risk associated with an encroachment shall be borne by the property owner unless otherwise specified in this policy.
- 3.4 The granting of an encroachment agreement or the concession of an encroachment without an encroachment agreement in accordance with this policy, does not release a leaseholder from the responsibility to comply with Provincial or Federal requirements or other municipal bylaws.
- 3.5 Encroachment agreements are subject to the consent of the Minister.
- 3.6 An authorized encroachment may continue to be used but it shall not be added to, rebuilt or structurally altered except:
 - 3.6.1 as may be necessary to remove the encroachment, or
 - 3.6.2 as may be necessary for the routine maintenance of the encroachment.
 - 3.6.3 no new encroachment shall be permitted from any property when an encroachment has been authorized.
 - 3.6.4 Any breach of this paragraph shall result in the immediate cancellation of any authorization and the requirement of removal of all encroachments from that leasehold.



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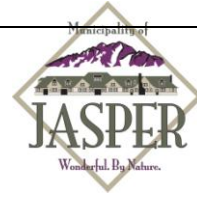
- 3.7 If an authorized encroachment or a structure benefitting from it is damaged or destroyed to the extent of more than 75% of its replacement value, the encroachment shall be removed unless its repair or reconstruction is authorized by the municipality.

4.0 ENCROACHMENT ONTO STREETS

- 4.1 Encroachments meeting the criteria set out in Schedule A, will not require an encroachment agreement. The Municipality may issue a letter in the form set out in Schedule C allowing the encroachment to remain until such time as the Municipality instructs the leaseholder responsible for the encroachment to remove it.
- 4.2 The request shall include:
- 4.2.1 a copy of a Real Property Report detailing the property and the extent of the encroachment,
 - 4.2.2 a copy of the title to the parcel,
 - 4.2.3 the application fee,
 - 4.2.4 photographs of the encroachment, and
 - 4.2.5 a cover letter setting out the circumstances that led to the application.
- 4.3 Where an encroachment is created by an owner granting land adjacent to the street to the municipality (i.e., a dedication agreement where an existing encroachment is to remain), the municipality shall, without charge, permit an encroachment agreement to be entered into with the owner. The removal period is subject to negotiation with the municipality taking into account the life of the encroachment and municipal requirements.
- 4.4 Arcades and structural awnings and structural canopies attached to building and store fronts that provide shelter to people on sidewalks in commercial areas may be permitted. Signage may be attached to the arcade, structural awning or structural canopies at the discretion of the municipality, and subject to all permit requirements. Such encroachments shall have:
- 4.4.1 a minimum vertical dimension from the sidewalk to the underside of the encroachment of 2.7 metres,
 - 4.4.2 in the horizontal dimension, shall only be permitted above pedestrian areas and may not be extended above vehicle travel areas.

5.0 ENCROACHMENT ONTO OPEN SPACE AND MUNICIPAL PARCELS

- 5.1 An encroachment may be permitted onto open space or municipal parcels if, in the sole determination of the municipality, it does not interfere or restrict the public's ability to access, use and enjoy the land. Such encroachments shall not exceed 0.3 metres into the space or parcel and shall not create an enclosure.
- 5.2 No non-permanent improvements, including (but not limited to) compost bins, fire pits, barbecue areas, domestic lawns or ornamental landscaping and



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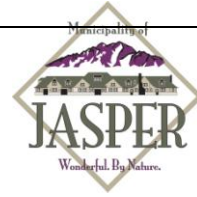
temporary uses including woodpiles, debris or garbage, excavation materials, vehicles, campers and trailer storage shall be permitted to encroach onto open spaces or municipal parcels.

6.0 ENCROACHMENT ONTO EASEMENTS AND UTILITIES

- 6.1 An encroachment into an easement or utility right of way or corridor may be permitted in accordance with the criteria outlined in Schedule D where it does not interfere with the operation and maintenance of the facility, except where adjacent to or located on a municipal parcel with an overhead electrical line. In cases involving overhead electrical lines, no encroachment will be permitted.
- 6.2 Notwithstanding paragraph 6.1, an encroachment into an easement or utility right-of-way corridor not within the criteria outlined in Schedule D may be permitted if acceptable to the affected 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.
- 6.3 An encroachment onto an easement or utility right-of-way or corridor not within the criteria outlined in Schedule D that is not permitted and not deemed acceptable by the affected utility operator shall be removed by the property owner.
- 6.4 An encroachment onto an easement shall not interfere with the Municipality's or affected utility company's need or ability to access the easement.

7.0 REMOVAL OF ENCROACHMENTS

- 7.1 Every property owner shall, upon notification in writing by the Municipality of an encroachment upon municipal lands, remove such encroachment to the satisfaction of the municipality:
 - 7.1.1 within thirty days of the receipt of such notification or such extended period as is reasonable to the municipality to allow for adverse weather or ground conditions, or
 - 7.1.2 as soon as practically possible, but no longer than fourteen days of the receipt of such notification specifying that the encroachment into municipal land that is designated as, or is part of, an emergency access.
- 7.2 Notwithstanding any other provision of this policy, where an encroachment poses an immediate danger to the public as determined by the Municipality, it shall be removed immediately by the property owner.



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7.3 In the event that a property owner in receipt of a notification of encroachment is unable or unwilling to remove the encroachment, the municipality shall immediately remove it to its satisfaction. All costs of the removal incurred by the municipality shall be borne by the property owner and shall be paid upon demand to the municipality. Failing payment, costs shall be recovered in the same manner as municipal taxes and fees.

7.4 Every property owner in receipt of a notification of encroachment pursuant to paragraph 7.1 or 7.2 who disputes the existence of the area of the encroachment shall, at his expense, retain a certified Canada Land Surveyor approved in writing by the municipality to conduct a legal survey and such survey shall be the sole and final determinant of whether encroachment has taken or is taking place.

8.0 ENFORCEMENT

8.1 The municipality will respond to all encroachment complaints and will apply this policy when encroachments are identified through normal process and management of municipal land.

8.2 This policy will be enforced by a designated officer.

9.0 REVIEW

9.1 The CAO or his delegate may review an original decision at the written request of the applicant.

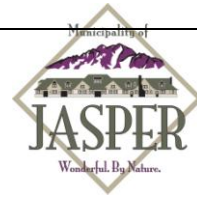
10.0 FEES AND COSTS

10.1 The municipality may levy a fee for entering into an encroachment agreement, by providing a letter acknowledging the encroachment or amending a utility right-of-way agreement.

10.2 Fees shall be established and revised by resolution of Council.

10.3 Any additional costs required to accommodate an encroachment, including but not limited to a road closure or subdivision application, shall be borne by the property owner.

10.4 Any costs of utility relocation or reconstruction required to accommodate an encroachment shall be borne by the property owner.

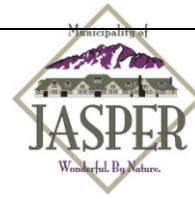


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SCHEDULE A

CABIN CREEK RIPARIAN ZONE





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SCHEDULE B

PERMITTED ENCROACHMENTS ONTO A STREET

Structures which provide direct access to a dwelling compliant with Jasper National Park's land use policies, practices and regulations, including:

- front driveways,
- sidewalks,
- special needs access (ramps, elevators, fire escapes, etc.),
- steps that provide access to a residential dwelling excluding retaining walls or landscape features that are in the opinion of the municipality considered to be features not directly benefiting the access.

Driveways which access lanes:

- which are constructed of asphalt, gravel, shale or concrete or other like material and which encroach not more than 0.3 metres into a gravel lane,
- which are hard surfaced and which encroach into a hard surfaced (asphalt or concrete) lane.

Fences:

- encroaching not more than 0.3 metres where the fence creates an enclosure, provided that the total area of encroachment from any property may not exceed 4.6 square metres,
- 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,
- developer fences required under development agreements 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:

- under 10 square metres and encroaching not more than 0.3 metres.

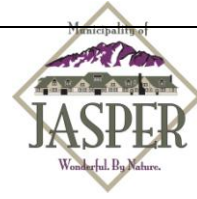
Retaining walls:

- 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:

- movable planters including any movable border material (e.g., plastic, concrete, timber sections under 0.2 metres in height);
- natural landscaping including sod, seed and planted landscaping such as shrubs and other low level landscaping but excluding trees and other deep rooted vegetation;
- surface level rocks;
- surface interlocking blocks.

Other:



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- any encroachment constructed for municipal purposes by the municipality or its agents (i.e., bollards, sound barriers, developer fences, subdivision entrance signs, guard rails, municipal animal-proof garbage containers and concrete pads etc.)

SCHEDULE C

LETTER FORM FOR MINOR ENCROACHMENTS TEMPLATE

SCHEDULE D

PERMITTED ENCROACHMENTS INTO UTILITY RIGHTS OF WAY, CORRIDORS AND EASEMENTS

- surface vehicle driveways and parking areas;
- surface pedestrian sidewalks and walkways;
- sod, seed and planted landscaping such as shrubs and other low level landscaping but excluding trees and other deep rooted vegetation;
- fences running through a utility right-of-way bisected by a property line;
- portable sheds and other portable accessory buildings (not on footings) under ten (10) square metres and encroaching not more than 0.3 metres;
- retaining walls not more than 0.2 metres in height and where not located within 2.0 metres to utility above ground surface facilities;
- non-permanent surface improvements including:
 - movable landscaping planters including any movable border material (e.g., plastic, concrete, timber sections under 0.3 metres in height);
 - surface level landscape rocks not more than 0.5 metres in height;
 - municipal animal-proof garbage containers and concrete pads;

Any item constructed for municipal purposes for or by the municipality.