

TOWN OF DRUMHELLER
BYLAW NUMBER 02.25
DEPARTMENT: DEVELOPMENT AND PLANNING

ENCROACHMENT BYLAW

A BYLAW OF THE TOWN OF DRUMHELLER, IN THE PROVINCE OF ALBERTA TO ADDRESS
ENCROACHMENTS INTO TOWN-OWNED LAND, STREETS AND EASEMENTS

WHEREAS the Municipal Government Act, R.S.A. 2000, c. M-26, empowers municipalities to pass bylaws dealing with the use and management of their property, and prohibiting or regulating any development;

AND WHEREAS the Municipal Government Act, R.S.A 2000, c. M.26 authorizes a municipality to pass bylaws regarding the remedying of the contraventions of bylaws;

AND WHEREAS section 651.2 of the Municipal Government Act, R.S.A 2000, c. M.26 allows municipalities to permit encroachments onto a road by agreement;

AND WHEREAS section 72 of the Land Titles Act, R.S.A. 2000, c. L-4, permits the registration of encroachment agreements on the affected parcels of land;

AND WHEREAS the Town of Drumheller recognizes its responsibility to its citizens to maintain and operate effective and safe services and to enable public access to lands intended for public use and enjoyment;

AND WHEREAS the Town of Drumheller recognizes the importance of upholding these responsibilities by effectively managing encroachments onto Town-owned land, streets, and easements;

NOW THEREFORE, the Council of the Town of Drumheller in the Province of Alberta, enacts as follows:

1. CITATION

1.1 This Bylaw shall be cited as the Town of Drumheller "Encroachment Bylaw."

2. DEFINITIONS

2.1 For the purposes of this Bylaw, the following definitions shall apply:

- a) *"Certificate of Title"* means the record of that title to land that is maintained by the Registrar as defined in the *Land Title Act, R.S.A 2000, c. L-4*;
- b) *"Chief Administrative Officer"* or *"CAO"* means the person appointed as Chief Administrative Officer for the Town of Drumheller, or their designate;
- c) *"Community Standards Appeal Board Bylaw"* means the means the *Community Standards Appeal Board Bylaw #31.24*, as amended from time to time, and its successor legislation;
- d) *"Easement"* means any right of way, including a *Utility Right of Way*, located on

privately owned property, established for the installation, construction, repair and maintenance of utilities, or for the access and passage of persons, identified by a registered plan or by description and documented by a registered caveat or easement agreement at the Alberta Land Titles Office.

- e) "*Encroachment*" means anything placed with a fixed location on the ground or attached to something having a fixed location on the ground that extends on, over, or under *Town land*, including the immediate airspace, and includes, but is not limited to, the following:
- i) buildings, all projections (including eaves, footings, foundations, weeping tiles, cantilevers, etc.) and siding;
 - ii) garages;
 - iii) extensions of adjacent lands by fill or any deposit of fill;
 - iv) fences;
 - v) sidewalks, curbs, parking pads, aprons, or driveways made from asphalt, concrete, or brick;
 - vi) structures (including decks, stairs, patios, gazebos, satellite dishes, antennas, decorative walls, etc.);
 - vii) walls;
 - viii) swimming pools and hot tubs;
 - ix) shrubs, trees or other organized landscape materials;
 - x) hard landscaping (including asphalt, concrete paving stones, retaining walls, fire places, planters, etc.);
 - xi) lighting fixtures;
 - xii) permanent signs;
 - xiii) underground electrical wiring (excluding utilities authorized by the *Town* and located within *Town land*); and
 - xiv) underground irrigation systems (excluding utilities authorized by the *Town* and located within *Town land*).
- f) "*Encroachment Agreement*" means an agreement between the owner and the *Town* permitting an *encroachment* subject to agreed-upon terms and conditions;
- g) "*Enforcement Order*" means an order written pursuant to section 545 or 546 of the *Municipal Government Act*;
- h) "*Municipal Government Act*" or "*MGA*" means the *Municipal Government Act, R.S.A. 2000 M-26*, as amended from time to time, and its successor legislation;
- i) "*Notice to Remedy*" means a written notice pursuant to this Bylaw that instructs a *person* to remedy a condition that is not in compliance with any provision of this Bylaw within a specified timeframe;

- j) “*Peace Officer*” has the same meaning given to it in the *Provincial Offences Procedure Act, R.S.A. 2000, c. P-34*;
- k) “*Person*” means a natural person or a corporation, and includes a partnership, an association, or a group of people acting in concert unless the content explicitly necessarily implies otherwise;
- l) “*Property Owner*” means the person(s) shown as the owner(s) of land on the *Certificate of Title* for a parcel in which an *encroachment* originates;
- m) “*Real Property Report*” means a survey document prepared, signed and stamped by an Alberta Land Surveyor, illustrating the location of all structures and visible improvements situated on a parcel of land relative to the property boundaries.
- n) “*Reserve Land*” means any parcel designated as municipal reserve, environmental reserve, municipal and school reserve, school reserve, conservation reserve, or community services reserve, as defined in the *MGA* or noted as community reserve on a *Certificate of Title*;
- o) “*Street*” means the entire area located within a road right of way, whether developed or not, and includes the roadway, sidewalks, boulevards, ditches and any other improvements located within the right of way;
- p) “*Town of Drumheller*” or “*Town*” means the Town of Drumheller, a municipal corporation in the Province of Alberta, and includes the area contained within the corporate boundaries of the *Town of Drumheller*, as the context may require;
- q) “*Town Land*” means all titles and non-titled lands owned by or under the direct responsibility of the *Town of Drumheller*, and includes all *streets, Utility Right of Ways* and easements.
- r) “*Utility*” means any lines, systems, infrastructure, or other facilities relating to any one or more of the following:
 - i) The distribution or transmission of electricity, telephone, cable television or telecommunications;
 - ii) The distribution or transmission of natural gas;
 - iii) The storage, transmission, treatment, distribution or supply of water;
 - iv) The collection, treatment, movement or disposal of sanitary sewage, including but not limited to pipes, force mains, and pumping stations; or
 - v) The drainage, collection, treatment, movement or disposal of storm sewer water, including but not limited to collection devices, drainage swales, pipes, pumping stations, storm water ponds and wetlands;
- s) “*Utility Provider*” means the *Town* or a third-party provider of *utilities*, which has authority to access and use a *Utility Right of Way* to construct, install, maintain, repair, replace, and operate its *utilities* pursuant to a *Utility Right of Way agreement*;
- t) “*Utility Right of Way*” means a *Utility Right of Way* granted pursuant to the *Land*

Titles Act, R.S.A. 2000, c L-4; and

- u) “*Violation Ticket*” has the same meaning given to it in the *Provincial Offences Procedure Act, R.S.A. 2000, c. P-34*.

3. INTERPRETATION

- 3.1 In this Bylaw, words in the singular include the plural and words in the plural include the singular.
- 3.2 In the event of conflict between a provision of this Bylaw and another *Town* bylaw, the provisions that is the most restrictive in relation to encroachment prevails.

4. SCOPE

- 4.1 This Bylaw applies to all *encroachments* into *Town Land*.
- 4.2 This Bylaw applies to all *encroachments* which currently exist at the time this Bylaw is passed, regardless of when they were first placed, as well as all *encroachments* placed after this Bylaw is passed.
- 4.3 Nothing in this Bylaw relieves a *person* from complying with any federal or provincial law, other *Town* bylaws, or any requirements of any lawful permit, order, or restriction on a *Certificate of Title* or license.

5. PROHIBITIONS AGAINST ENCROACHMENTS

- 5.1 A *person* must not place or allow to be placed an *encroachment* onto *Town Land* without the written authorization of the *Chief Administrative Officer* or the execution of an *encroachment agreement* with the *Town*.
- 5.2 Notwithstanding any other provision in this Bylaw, a *person* must not place or allow to be placed an *encroachment* onto *Reserve Land*, unless permitted otherwise by *Town* policy, bylaws or the *Municipal Government Act*.

6. ENCROACHMENTS INTO TOWN LAND

- 6.1 Notwithstanding section 5, the following improvements shall be permitted to encroach into a *street* and shall not require prior written approval:
 - a) driveways of any material adjacent to a road or lane;
 - b) sidewalks; and
 - c) emergency access ramps, wheelchair or other accessibility ramps, fire escapes or similar structures.
- 6.2 Notwithstanding section 5, the following improvements shall be permitted to encroach into a *Utility Right of Way* and shall not require prior written approval:
 - a) Driveways of any material that cross over the *Utility Right of Way*, though do not run parallel to or with it;

- b) Sidewalks, including steps; and
 - c) Emergency access ramps, wheelchairs or other accessibility ramps, fire escapes or similar.
- 6.3 *Encroachments* outlined within Schedule “A” of this Bylaw may be permitted by written authorization of the *Chief Administrative Officer* subject to the terms, conditions, and duration of the authorization;
- 6.4 *Encroachments* that exceed the requirements of Schedule ‘A’ of this Bylaw may be permitted upon the application and execution of an *encroachment agreement* with the *Town*, subject to the terms, conditions, and duration of the agreement;
- 6.5 The *Chief Administrative Officer* is responsible for establishing the terms, conditions, and duration of all written authorizations or *encroachment agreements* established pursuant to section 6.3 and section 6.4 of this Bylaw, respectively.

7. ENCROACHMENT APPLICATION

- 7.1 Notwithstanding section 6 of this Bylaw, no *encroachment* shall be permitted until the *property owner* has submitted a duly completed encroachment application, in the form prescribed by the *Chief Administrative Officer*, along with all required supporting documentation, and the *Chief Administrative Officer* has reviewed and approved the application.
- 7.2 To begin the application process pursuant to Section 7.1, a *property owner* must submit the following:
- a) A completed application in the prescribed form;
 - b) An original copy of a *real property report* for the subject parcel, issued within six (6) months of the date of submission, or within two (2) years of the date of submission if accompanied by a sworn affidavit stating that no changes to the property have been made;
 - c) A current copy of the *Certificate of Title* for the subject parcel;
 - d) Photographs of the *encroachment*, if required; and
 - e) The prescribed fee, as outlined in the *Fees, Rates and Charges Bylaw*;
- 7.3 If an *encroachment agreement* is required, pursuant to section 5 of this Bylaw, the *property owner* must submit an agreement, drafted by a lawyer authorized to practice in the Province of Alberta, which shall include:
- a) the location and identification of the *encroachment*;
 - b) the owner’s responsibilities to maintain the *encroachment*;
 - c) terms or conditions under which the agreement is terminated;

- d) the *Town's* right to have access to the land;
- e) indemnification of the *Town*, its agent and licensees; and
- f) any other clauses deemed necessary by the *Town*.

7.4 When an *encroachment agreement* has been executed, the *property owner* shall register the *encroachment agreement* by caveat on the *Certificate of Title*.

8. FEES

8.1 The *property owner* shall be responsible for all costs related to facilitating an *encroachment*, which includes but is not limited to:

- a) the fees associated with the application for an *encroachment*, as outlined in the *Rates, Fees and Charges Bylaw*.
- b) fees arising from the use of *Town Land* in accordance with an *encroachment agreement*;
- c) any additional costs related to the processing of an application for an *encroachment agreement*, including legal fees, registration of the *encroachment agreement*, road closure applications, subdivision applications, disposal of reserves or other related costs; and
- d) any costs of utility relocation or reconstruction required to facilitate an encroachment.

8.2 The *property owner* shall, at their sole expense, be responsible for the costs of removing and restoring lands encumbered by an *encroachment*, as directed by the *Chief Administrative Officer*.

9. REFUSAL OF ENCROACHMENT

9.1 Notwithstanding section 6 and section 7 of this Bylaw, the *Chief Administrative Officer* may refuse to permit an *encroachment* if, in the *Chief Administrative Officer's* sole opinion, the proposed or existing *encroachment*:

- a) interferes with the safety of the public, the *Town*, or a *utility provider*;
- b) interferes with the *Town's* or the *utility provider's* ability to access, maintain, and operate its *utility* on *Town Land*;
- c) interferes with the public's ability to access *Town Land* intended for public use and enjoyment; or
- d) is not in the best interest of the *Town* or the citizens of Drumheller.

9.2 Any *property owner* who receives a refusal letter pursuant to section 9.1 shall not place an *encroachment*, and if applicable, must remove the *encroachment* within thirty (30) days of receiving the letter.

10. NOTICE TO REMEDY

- 10.1 Where the *Chief Administrative Officer* believes that an *encroachment* exists that should be removed or remedied, the *Chief Administrative Officer* shall provide a *Notice to Remedy*, which shall include written instruction to the *property owner* to remove or remedy the *encroachment*.
- 10.2 The *Notice to Remedy* shall include:
- a) the location of the *encroachment(s)*;
 - b) a description of the condition or conditions that are in violation of this Bylaw;
 - c) the remedial action that is required; and
 - d) the deadline for completion of remedial action, which shall be no less than seven (7) days and no more than one (1) year from the date of service.
- 10.3 Any owner who receives a *Notice to Remedy* and fails to fully comply with the requirements of the *Notice to Remedy* in the timeframe allotted commits an offence under this Bylaw.

11. ENFORCEMENT ORDERS

- 11.1 If the *Chief Administrative Officer* finds a *property owner* to be in violation of this Bylaw, they may issue an *Enforcement Order* in accordance with section 545 or 546 of the *MGA* that provides instructions to remedy the conditions found to be in violation of this Bylaw.
- 11.2 Any *property owner* or occupier who receives an *Enforcement Order* and fails to fully comply with the requirements of the *Enforcement Order* commits an offence under this Bylaw.
- 11.3 If a *property owner* or occupier receives an *Enforcement Order* and fails to fully comply with its requirements, the *Town* may take action to remedy the contraventions on the *Enforcement Order* at the *property owner's* or occupier's expense; this expense shall be added to the tax roll of the *property owner* and the *Town* shall recover the expense in the same manner as other taxes, pursuant to the *Municipal Government Act*.
- 11.4 Any *person* who receives an *Enforcement Order* may, by written notice within fifteen (15) calendar days after the date the order is received, request that the *Enforcement Order* be reviewed by the Community Standards Appeal Board.
- 11.5 The application for appeal, and the review of the *Enforcement Order* shall be done in accordance with the *Community Standards Appeal Board Bylaw*.

12. PENALTIES

- 12.1 A *person* who contravenes or fails to comply with a provision of any section of this Bylaw is guilty of an offence and shall be liable, upon summary conviction, to a penalty not less than \$100.00 and not exceeding \$5000.00, or to imprisonment for not more than six months for non-payment of a fine. Specified penalties to be issued by *Peace Officers* are found in Schedule "B" of this Bylaw.
- 12.2 Offences of a continuing nature shall be deemed to constitute a separate offence for

each day or part of a day that the offence continues.

- 12.3 A *Peace Officer* who has reasonable and probable grounds to believe that any *person* has contravened any provision of this Bylaw may issue and serve a *violation ticket*, allowing voluntary payment of the specified penalty to the court, or requiring a *person* to appear in court without the alternative of making a voluntary payment.
- 12.4 The recording of the payment of the specified penalty made to the court pursuant to a *violation ticket* shall constitute acceptance of a guilty plea and conviction for the offence.

13. TERMINATION OF AUTHORIZATION OR AGREEMENT

- 13.1 Notwithstanding any provision of this Bylaw, the *Town* may, at any time and in its sole discretion, terminate the written authorization of an encroachment or an *encroachment agreement* by providing written notice to the *property owner*, where the encroachment is affected by future plans for *utilities*, street widening, or other municipal development, or for any other reason the *Chief Administrative Officer* deems necessary for the public interest.

14. SCHEDULES

- 14.1 Schedule 'A' and Schedule 'B' are attached to and form part of this Bylaw.

15. SEVERABILITY

- 15.1 If any portion of this Bylaw is found to be invalid, that portion shall be severed from the remainder of the Bylaw and shall not invalidate the whole Bylaw.

16. TRANSITIONAL

- 16.1 This Bylaw comes into full force and effect upon third and final reading.

READ A FIRST TIME THIS 25th DAY OF AUGUST 2025.

READ A SECOND TIME THIS 25th DAY OF AUGUST 2025.

READ A THIRD AND FINAL TIME THIS 22nd DAY OF SEPTEMBER 2025.

The original document, duly signed and executed, is retained on file.

SCHEDULE 'A'

ENCROACHMENTS INTO TOWN LAND THAT REQUIRE WRITTEN AUTHORIZATION

1. ENCROACHMENTS INTO TOWN LAND OR STREETS

- 1.1 Fence sections that encroach up to 0.10 metres into a street, providing no public utilities are captured within the fence sections.
- 1.2 Concrete garage aprons encroaching up to 0.10 metres into streets.
- 1.3 Steps which do not interfere with public sidewalks or trails and do not decrease the usable width of a street.
- 1.4 Retaining walls less than 0.60 metres in height, encroaching less than 0.10 metres into a street, except where the retaining wall is located adjacent to Town utilities or other above-ground surface utilities.
- 1.5 Retaining walls authorized as a condition of a development permit.
- 1.6 Non-permanent surface improvements within a boulevard area, including landscaping features, ground cover, driveways, and irrigation systems, which extend beyond a property line to a sidewalk, curb, or edge of pavement.
- 1.7 Signs, awnings, or canopies projecting into a street provided they:
 - a) project less than 2.4 metres measured horizontally over the street;
 - b) are not located closer than 1.0 metres measured horizontally to the portion of the street used for the passage of motor vehicles; and
 - c) are not less than 2.4 metres measured vertically above the surface of the street.
- 1.8 Outdoor/sidewalk patios that have received approval from the necessary Town departments.

2. ENCROACHMENTS INTO EASEMENTS

- 2.1 Driveways, sidewalks, or similar grade-level features which provide access to a residential dwelling or commercial business, that in the opinion of the Chief Administrative Officer are features directly benefiting the access or which may adversely affect access to or use of the *easement*.
- 2.2 Fence sections that encroach less than 0.10 metres into an *easement*.
- 2.3 Portable sheds not greater than 10 square metres, not constructed on a permanent foundation, nor connected to utility services.
- 2.4 Retaining walls less than 0.6 metres in height, encroaching less than 0.3 metres into an *easement*, except where the retaining wall is located adjacent to Town utilities or other above ground surface utilities.
- 2.5 Non-permanent surface improvements within a boulevard area, including landscaping features, ground cover, driveways, and irrigation systems.
- 2.6 Eaves encroaching less than 0.1 metre into an *easement*.

SCHEDULE 'B'
SPECIFIED PENALTIES

Bylaw Section #	Description of Offence	Penalty
General Penalties	All violations of this Bylaw not specified within this schedule	\$250.00
5.1	Place unauthorized encroachment on Town land	\$1000.00
5.2	Place unauthorized encroachment on lease land	\$500.00
16.3	Fail to comply with Notice to Remedy	\$250.00
17.2	Fail to comply with an Enforcement Order	\$500.00