

<b>VILLAGE OF EMPRESS</b>	Date Adopted: 15 July 2025
<b>Policy</b>	Policy #: 25-01
<b>Encroachments</b>	Effective Date: 15 July 2025

## 1. INTRODUCTION

- 1.1. This Encroachment Policy and associated **Encroachment Agreements** are intended to provide a clear and consistent way for a municipality to manage **encroachments** onto public land.
- 1.2. The Village of Empress' preference is to resolve **encroachments** by having them removed by the landowner. However, a landowner may decide that the benefit from the **encroachment** is worth the time, expense and process involved in obtaining authorization for the **encroachment** to remain.
- 1.3. The ability for a municipality to allow for **encroachments** is granted through provincial legislation. Section 651.2 of the *Municipal Government Act* empowers municipalities to permit **road encroachments** onto a **road** by agreement. Section 72 of the *Land Titles Act* permits the registration of **Encroachment Agreements** on the affected parcels of land.

## 2. DEFINITIONS

**Alberta Land Surveyor (ALS)** means a professional surveyor registered with the Alberta Land Surveyors' Association.

**Certificate of title** means the record of title to land that is maintained by the Registrar as defined in the *Land Titles Act*, RSA 2000, c L-4.

**Easement** means any **easement** granted to the Village of Empress for any purpose and includes **utility rights-of-way** and **overland drainage easements** and which are registered on a **certificate of title**, by a registered plan under the *Land Titles Act* by description or by caveat and documented by an easement agreement.

**Encroachment** means anything placed within a fixed location on the ground or attached to something having a fixed location on the ground that extends on, over, or under a municipal property or interest and includes, but is not limited to the following:

- improvements as defined in the Alberta Land Surveyors' Association Manual of Standard Practice, 2022, as amended from time to time;
- buildings and all projections including eaves, cantilevers, or similar and siding;
- sheds, including those attached to a dwelling or fence;
- fences;
- driveways;

- structures such as decks, stairs, patios, pergolas, gazebos or similar;
- extension of adjacent land by fill;
- walls (e.g. retaining walls);
- swimming pools and hot tubs; and
- hard landscaping including but not limited to structures, fire pits, planters or similar.

**Encroachment Agreement** means an agreement which the Village of Empress may enter with a property owner authorizing an **encroachment** which shall, among other items, include:

- The location and identification of the **encroachment**;
- The landowner's responsibility to maintain the **encroachment**;
- Terms or conditions to terminate the **Encroachment Agreement**;
- Cost and liability for removing an **encroachment**;
- Indemnification of the Village of Empress, its agents, or licensees;
- A provision requiring the removal of an **encroachment** following 30 days' notice by the Village of Empress.

**Letter of Consent** means a letter issued by the Village of Empress which formally recognizes an **encroachment** by both the landowner and the municipality, and clearly establishes the terms and conditions specific to the permission being granted, including but not limited to the provisions that permission for the **encroachment** is being granted until such a time as it is required to be removed by the municipality, in its sole discretion.

**Overland drainage easement** means an easement for the construction, operation, inspection, maintenance, repair and replacement of any facilities for the drainage or control of storm water, including but not limited to:

- a grass swale;
- a concrete or asphalt walkway, gutter or swale;
- a drainage control fence or structure; and
- the sloping and contouring of land to facilitate the drainage or control of stormwater.

**Real Property Report (RPR)** means a document prepared by an **Alberta Land Surveyor (ALS)** that identifies significant visible improvements relative to property boundaries.

**Reserve** 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 *Municipal Government Act*, as amended, or designated as "reserve" by any former Planning Acts.

**Road** means a thoroughfare, highway, road, avenue, street, lane or bridge or any part of which the public is ordinarily entitled or permitted to use for the passage or parking of vehicles, and includes sidewalks, ditches and boulevards.

**Utility rights-of-way** means an **easement** that contains any utility service providers lines, systems, infrastructure or other facilities relating to a public utility as defined in the *Municipal Government Act*, which is registered on the **certificate of title** by a registered survey plan and documented by a utility right-of-way agreement granted to the municipality.

### 3. SCOPE

- 3.1. This policy applies to all **encroachments** onto municipal-owned land, **roads** and **easements**.
- 3.2. Municipal-owned land, **roads** and **easements** includes boulevards, sidewalks, roads, bridges, lanes, **utility rights-of-way**, **overland drainage easements**, and titled parcels of land owned by the Village of Empress.

### 4. PURPOSE

- 4.1. The Village of Empress recognizes the importance of effectively managing **encroachments** into municipal-owned land, **roads** and **easements**.
- 4.2. The Village of Empress must ensure that **encroachments** do not adversely affect the municipality's or utility service provider's ability to access, maintain and provide safe and effective services to residents and businesses.
- 4.3. The Village of Empress must ensure that **encroachments** do not restrict public access to and the enjoyment of lands intended for public use.

### 5. ALLOWED ENCROACHMENTS – NO LETTER OF CONSENT OR ENCROACHMENT AGREEMENT REQUIRED

- 5.1. **Encroachments** allowed into a **road** or lane without a **Letter of Consent** or an **Encroachment Agreement** include the following surface improvements:
  - driveways of any material adjacent to a road or lane;
  - sidewalks;
  - emergency access ramps, special needs access ramps, fire escapes or similar; and
  - any structure constructed for municipal purposes by the Village of Empress or its agents, including but not limited to bollards, sound barriers, fences, signs, guard rails, retaining walls or similar structures.
- 5.2. **Encroachments** allowed into a **utility right-of-way** without a **Letter of Consent** or an **Encroachment Agreement** include the following surface improvements:
  - driveways of any material that cross the over the **utility right-of-way** and do not run parallel to or with it;
  - sidewalks;
  - emergency access ramps, special needs access ramps, fire escapes or similar.
- 5.3. Where a **Real Property Report** submitted for a Letter of Compliance Request contains an **encroachment** specified in 5.1 or 5.2, the municipality will issue the Letter of Compliance noting the **encroachment** is allowed.

## 6. ALLOWED ENCROACHMENTS – LETTER OF CONSENT REQUIRED

- 6.1. **Encroachments** allowed into a **road** or **utility right-of-way** which require a **Letter of Consent** include:
- fences that encroach no more than 0.34 m where the fence creates an enclosure;
  - fences that encroach to the back of a municipal sidewalk or within 1.0 m from the back of curb or 1.5 m from the lip-of-gutter (where there is no sidewalk), where the fence is a linear extension of a fence on the landowner’s property;
  - retaining walls not more than 0.24 m in height, encroaching not more than 0.34 m where not located adjacent to above ground utility service provider facilities;
  - non-permanent improvements such as moveable planters or moveable landscaping border material;
  - interlocking brick, asphalt or other similar material (not considered an approved driveway);
  - eaves from a residential building not more than 0.64 m (provided the building does not encroach) into a **utility right-of-way** above a height of 2.4 m above grade, except where located on lands with an overhead electrical line requiring minimum clearance; and
  - non-permanent structures or such as a moveable shed under 10.0 m<sup>2</sup> in floor area, that encroach not more than 0.34 m into a lane or **utility right-of-way**.
- 6.2. **Encroachments** into an **overland drainage easement** must be reviewed by municipal departments to determine the acceptability of the **encroachment** and any conditions to be placed on the **Letter of Consent**.
- 6.3. Where a **Real Property Report** submitted for a Letter of Compliance Request contains an acceptable **encroachment** specified in 6.1 or 6.2, the municipality will issue the Letter of Compliance noting “compliant” and a **Letter of Consent** for the **encroachment**.

## 7. ENCROACHMENT AGREEMENT REQUIRED

- 7.1. All **encroachments** not listed in Sections 5 and 6 require review and circulation by municipal departments and/or utility service providers to determine the acceptability of the **encroachment**.
- 7.2. If approved following the circulation, an **Encroachment Agreement** will be required to be executed.
- 7.3. When an **Encroachment Agreement** has been authorized and prepared by the Village of Empress, the landowner shall execute the **Encroachment Agreement** and shall register the **Encroachment Agreement** by caveat on the **certificate of title**. If the **Encroachment Agreement** is not executed by the landowner and submitted for registration within 30 days, the Village of Empress will mail a letter requiring the removal of the **encroachment**.

## 8. ENCROACHMENTS NOT PERMITTED

- 8.1. An existing **encroachment** on municipal-owned land or a **road** extending greater than 3.0 m is not eligible for an **Encroachment Agreement**.
- 8.2. A person must not place or allow to be placed an **encroachment** onto **Reserve** land.
- 8.3. Where an **encroachment** extends onto **Reserve** land, the owner shall remove the **encroachment** at the owner's expense within 30 days of receiving a removal notice from the Village of Empress or other such timeline the municipality deems acceptable.
- 8.4. Notwithstanding anything in this policy, the Village of Empress will not allow any **encroachment** to exist where it determines in its sole discretion that any one or more of the following circumstances exist:
  - the **encroachment** causes a public safety concern;
  - the **encroachment** extends into municipal owned lands that intended for or may be used as an emergency access;
  - the **encroachment** interferes with the ability of the Village of Empress or a utility service provider to access an **easement**;
  - the **encroachment** creates concern regarding unsightliness;
  - the **encroachment** creates fairness concerns, including whether the **encroachment** will increase the usable area for a landowner, for which the landowner is not taxed; and/or
  - the **encroaching** structures or objects are not permanent and can be reasonably and practically relocated.

## 9. GENERAL

- 9.1. All expenses, costs, liabilities or other risk associated with both authorized and unauthorized **encroachments** shall be borne by the landowner. The Village of Empress shall not be responsible for any expenses, costs, liabilities or other expense associated with authorized and unauthorized **encroachments**.
- 9.2. An **encroachment** once authorized by the Village of Empress may continue to be used, but the **encroachment** shall not be added to, rebuilt or structurally altered except:
  - as may be necessary to remove the **encroachment**;
  - as may be necessary for routine maintenance of the **encroachment**;
  - where the **encroachment** complies with Section 5 of this policy; and/or
  - where a new **Encroachment Agreement** has been executed.
- 9.3. The Village of Empress does not manage **encroachments** between two private landowners.

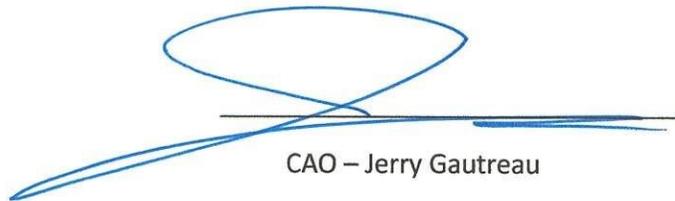
## 10. ENFORCEMENT

- 10.1. A landowner will be notified in writing advising that an unauthorized **encroachment** be removed and any conditions of removal upon the Village of Empress receiving a complaint or a **Real Property Report** showing an **encroachment**.

- 10.2. All unauthorized **encroachments** shall be removed by the landowner from the affected property within 30 days of receiving a rejection letter and/or removal notice from the Village of Empress. An updated **Real Property Report** must be submitted to the Village of Empress, evidencing that the **encroachment** has been removed.
- 10.3. In addition to this policy, **encroachments** may be enforced by other applicable bylaws.
- 10.4. If a landowner fails to remove an **encroachment** or fails to apply for and receive approval for an **Encroachment Agreement**, the Village of Empress may take action to remove the **encroachment** and seek reimbursement from the landowner for all such costs under the *Municipal Government Act*.

## 11. FEES

- 11.1. The landowner is responsible for all costs related to removal of all unauthorized **encroachments**.
- 11.2. Any additional costs required to facilitate an **encroachment**, including but not limited to a road closure, subdivision application or relocation of utilities shall be responsibility of the landowner.
- 11.3. There will be a \$250.00 fee for preparing an Encroachment Agreement.



CAO – Jerry Gautreau