

TRESPASS/ENCROACHMENT

The Council of the City of Dawson Creek directs that:

Background

The City of Dawson Creek recognizes that **trespasses and** encroachments exist, and will continue to be discovered and therefore has established this policy for processing encroachment applications.

Trespasses and Encroachments occur into City-owned lands and into City-occupied rights-of-way. On behalf of the citizens of Dawson Creek, the City must ensure that **trespasses** and encroachments do not:

- a. adversely affect these lands and rights-of-way or the City's ability to maintain effective services,
- b. restrict public access and enjoyment of lands for public use, or
- c. contradict Federal/Provincial legislation, City bylaws, City policies, or City planning documents.

Formal approval is required to protect the City and other Utilities where existing **trespasses** or proposed encroachments are identified. Such approval may take the form of a permit, a license of occupation, or an encroachment agreement; or alternatively, in certain circumstances, the land may be considered for sale. The City must receive fair market value compensation for any private use of City-owned land that benefits a business.

Purpose

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

Definitions

- a. Encroachment: anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (excluding sidewalks, fences, or any other municipal improvement used and owned by the City) by a person other than the City, that extends on, over or under City lands and rights-of way, and shall include but not be limited to the following:
 - i. Buildings and all projections (including eaves, footings, foundations, weeping tiles, cantilevers, etc.) and siding;
 - ii. Sheds, including those attached to a dwelling and/or a fence;
 - iii. Fences, including City land enclosed by an encroaching fence;

- iv. Asphalt, concrete, or brick sidewalks, curbs, parking pads, aprons, or driveways;
 - v. Structures (including decks, stairs, patios, balconies, etc.);
 - vi. Retaining walls;
 - vii. Swimming pools and hot tubs;
 - viii. Shrubs, trees, or other organic landscaping materials planted in City-owned land;
 - ix. Hard landscaping (including asphalt, concrete paving stones, retaining walls, planters, and structures);
 - x. Light standards;
 - xi. Permanent signs.
- b. Right-of-way: any utility right-of-way or other right-of-way on privately-owned land, established for the installation, construction, repair, and maintenance of utilities, or for the access and passage of the general public, identified by a registered plan or by description and documented by a charge on title to the privately-owned land.
- c. Trespass: means a wrongful entry upon land owned or occupied by the City resulting in damage to that land.
- d. Utility: means any one or more of the following:
- i. systems for the distribution of gas, whether artificial or natural, electricity, telephone, cable television and oil products,
 - ii. facilities for storage, transmission, treatment, distribution, or supply of water,
 - iii. facilities for the collection, treatment, movement, or disposal of sanitary sewage, including pumping stations, or
 - iv. storm water drainage facilities, including collection, treatment, pumping stations, storm water ponds, and wetlands.

General

- a. Encroachments onto or into City-owned and City-controlled land such as parks, road allowances or laneways, fee simple properties or rights-of-way, are not permitted except where authorized by the City pursuant to this policy, or by a formal agreement with the City that pre-dates the establishment of this policy and remains in force.
- b. Compliance with the City's current bylaws, policies and planning documents as well as provincial and federal legislation will be considered during the application of this Trespass/Encroachment Policy. These include, but may not be limited to:
 - i. Federal and Provincial legislation

- ii. *Community Charter* (BC) and *Local Government Act* (BC)
 - iii. The City's Official Community Plan and Zoning bylaws
 - iv. The City's Property Maintenance Bylaw
 - v. The City's Land Use Bylaw
 - vi. The City's Park Dedication Bylaw
 - vii. The City's Park Dedication Policy
 - viii. The City's Bylaw Enforcement Guidelines Policy
 - ix. The City's Walkways Policy
 - x. The City's Land Sale Policy
 - xi. The City's Trees – Standardized Urban Forestry Policy
 - xii. The City's Transportation Master Plan
 - xiii. The City's Parks and Recreation Master Plan
- c. The following criteria will also be considered with respect to an application for an encroachment approval or an offer to purchase City-owned land:
- i. **Trespasses**/encroachments within an emergency access;
 - ii. **Trespasses**/encroachments that create, or have the potential to create, a hazardous situation;
 - iii. **Trespasses**/encroachments that reduce off-street parking for more than 48 hours (except those related to development);
 - iv. **Trespasses**/encroachments that obstruct sightlines below a standard acceptable to the City's Development Services Department;
 - v. **Trespasses**/encroachments that impede, obstruct, or damage utilities or result in their unsafe exposure;
 - vi. parkland designation, including levels of access and public use;
 - vii. the impact on neighbouring properties;
 - viii. the amount of land being utilized/requested;
 - ix. permits;
 - x. new development or long-standing development;
 - xi. plans for future use by the City.
- d. Boulevard Improvements:

Please note that this policy does not apply to boulevard improvements which include but may not be limited to the following:

- i. non-permanent landscaping features such as flower beds and low-lying shrubs; or
- ii. gravel and fine stone flower-beds.

Provided they do not present a safety issue, these types of landscaping and boulevard improvements do not require a permit or agreement with the City. Maintenance of any such boulevard improvements is not the responsibility of the City. Private landowners should contact the City for confirmation that no

permit or agreement is required for their existing or proposed boulevard improvement.

Enforcement

It is the intention of the City to apply this policy when a complaint is received or when **trespasses/encroachments** are identified by the City through its normal process and management of municipal land, or upon request by a landowner.

Trespasses or Encroachments that existed PRIOR to adoption of this policy will not be proactively enforced, but the City will take action when a complaint is received, in accordance with clause No. 2 of the Bylaw Enforcement Guidelines Policy.

As an exception to clause No. 2 of the City's Bylaw Enforcement Guidelines Policy, a trespass or encroachment that occurs AFTER the date this policy is adopted will be proactively enforced when the City becomes aware of the Trespass or Encroachment through its normal process and management of municipal land. Existing City staff will be directed to actively identify and report any new trespasses/encroachments on City land.

Application Process

a. Authorized Encroachment

- i. A landowner may seek Council approval to encroach into City-owned land or City-controlled land by making an application to the City in accordance with this **Trespass/Encroachment** Policy and with any encroachment procedures used by the Development Services Department. Applications must include all required documentation and will be considered on a case-by-case basis, in accordance with this policy. A staff recommendation will be provided to Council for consideration of approval. Submission of a complete application does not guarantee that an encroachment will be approved and Council may decline to authorize an encroachment for any reason.

If approved by Council, staff will complete the required encroachment documentation by way of permit, license to occupy, adopt-a-park agreement, or encroachment agreement, or by way of a registered right-of-way agreement with a utility operator.

All costs relating to an application will be the responsibility of the owner, such as the application fee, surveying costs, Land Title Office fees, etc.

- ii. Offer to Purchase

Alternatively, a landowner may seek Council approval to purchase City-

owned land by submitting a request to the City. Following a thorough review by staff, a recommendation will be provided to Council for consideration of approval. It should be noted that the sale of land will only be considered in extenuating circumstances and that a submission of an offer to purchase does not guarantee approval. Any land sold through this process must be consolidated with the adjoining parcel of land benefitting from the encroachment. Council may decline an offer to purchase for any reason.

If approved by Council, preparation of all required documentation and payment of City fees, Land Title Office fees, property transfer tax, GST, and all professional fees incurred by the City and the owner will be the responsibility of the owner.

b. **Trespass/Unauthorized Encroachment**

- i. Where a **trespass** or encroachment is identified, the City will promptly notify the owner or occupier of the encroachment **or the individual performing the trespass**. The owner or occupier of the encroachment must submit a completed application to authorize the encroachment in accordance with this Trespass/Encroachment Policy within 30 days of receiving the notification from the City. Upon receipt of a complete application, City staff will proceed as per subsection a. above.
- ii. Should the owner or occupier fail to submit a complete application within 30 days of receiving the notification, the owner or occupier must have the **trespass/**unauthorized encroachment removed at their expense:
 - within the next 30 days, or such extended period as is reasonable to the City to allow for adverse weather or ground conditions, or
 - as soon as practically possible, but no longer than 14 days after receipt of such notification specifying that the encroachment into City land that is designated as, or is part of, an emergency access.
- iii. City land must be returned to equal or better condition as it was prior to the **unlawful trespass or** encroachment being made. Determination regarding the condition of land will be to the satisfaction of the Chief Administrative Officer or designate.
- iv. If the unauthorized encroachment is not removed **or the trespass is not remedied** within the above timeline, the City will remove the unauthorized encroachment **or take steps to remedy the trespass** at the owner's sole expense, and the cost of any action taken by the City ~~to remove the unauthorized encroachment~~ **to do so** will be charged to the owner of the trespass/unauthorized encroachment. The owner of the unauthorized encroachment **or the person responsible for the trespass**

will receive an invoice within 30 days for all costs incurred by the City in connection with the removal **or remedy** of the trespass/unauthorized encroachment. Any amounts charged for trespass/unauthorized encroachment removal **or remedy** pursuant to this policy may be recovered by the City as a debt due by the owner of the unauthorized encroachment **or the person responsible for the trespass**. In the case where trespass/unauthorized encroachment removal is carried out by the City in the form of works done or services provided to private land, such debt is recoverable from the owner of the private land in the same manner as property taxes and if remaining unpaid at the end of the calendar year in which they are imposed, such amounts are deemed to be taxes in arrears.

- v. Should extenuating circumstances exist that merit the City affording additional time to occupiers for removing the unauthorized encroachment **or remedying the trespass**, Council may grant such additional time.
- vi. Notwithstanding any other provision of this policy, where a **trespass/encroachment** poses an immediate danger to the public as determined by the City, it shall be removed immediately by the owner of the encroachment **or the person responsible for the trespass**.

c. Fees and Charges

Fees and charges for permits and encroachment agreements will be as identified within the City of Dawson Creek Fees and Charges Bylaw.

APPROVED BY COUNCIL:

DATE: _____