

**ALBERTA BEACH  
VILLAGE POLICIES**

<b>POLICY: G.3.0 ENCROACHMENT AGREEMENT POLICY</b>
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**1. POLICY STATEMENT**

Section 61 of the Municipal Government Act (Act) authorizes a Municipality to grant rights over its property and Section 651.2 of the Act authorizes a Municipality to register a caveat with respect to encroachments. Alberta Beach realizes encroachments on Municipal property and easements exist and will continue to be discovered, and has established this policy as a result.

Alberta Beach administers or owns a variety of parcels of land including roads and reserves and also has interests in privately owned land by way of easements.

Encroachments must not adversely affect any such subject lands. Easements that exist, shall have the ability to: maintain effective services, restrict public access, or restrict the enjoyment of lands for public use. Identified owners of the encroachment may be allowed to retain said encroachment through a signed Letter of Consent or may be required to enter into an agreement with Alberta Beach, or may need to remove the encroachment.

**2. PURPOSE**

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

Alberta Beach may authorize encroachments which have occurred onto the said Municipal Lands or Municipal Easement/Right-of-Way through execution of a written Letter of Consent or enter into an Encroachment Agreement with the infringing party.

Encroachment Agreement requests will be reviewed on their own merits, and Alberta Beach must ensure that the encroachment does not adversely affect the Municipality or a utility operator's ability to maintain services for public use.

**3. DEFINITIONS**

"Act" shall mean the Municipal Government Act being the Revised Statutes of Alberta, 2000, Chapter M-26.1 , and amendments thereto.

"Alberta Beach" shall mean the Municipal Corporation of the Village.

"C.A.O." shall mean the person appointed to the position of Chief Administrative Officer by Council pursuant to the Act.

"Caveat" shall mean a formation notification registered on the title of a parcel of land with Land Titles.

"Council" shall mean the Council for the Municipality of Alberta Beach.

"Development Officer" shall mean a person appointed by Council as Development Officer (or their designate) pursuant to the Land Use Bylaw.

"Easement" shall mean 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 Alberta Beach.

"Encroachment" shall mean any portion of a fence, landscaping improvements, or structures and all projections which extends onto, over or under the said Municipal Lands and shall include but not limited to the following:

- a) fences and Landscaping Improvements - wood post and barb wire, brick, wooden plank, wrought iron, steel pipe, or some combination of these fence materials, trees, retaining walls, asphalt, concrete, gravel, or brick sidewalks, curbs, parking pads, aprons or driveways, and others; and
- b) structures and all projections - buildings, sheds, retaining walls, decks, stairs, balconies, planters, light standards, signs, swimming pools, hot tubs, satellites, and others.

"Encroachment Agreement" shall mean an agreement, pursuant to Section 651.2 of the Act under which a Municipality permits the encroachment of fences and landscaping improvements, also structures and all projections onto the said Municipal Lands.

"Improvements" shall mean encroachment.

"Land Use Bylaw" shall mean the Bylaw that has been adopted by Council of Alberta Beach for the purpose of prohibiting or regulating and controlling the use and development of land and buildings within Alberta Beach.

"Landowner" shall mean the owner/s of land adjacent to Municipal Lands named on the Certificate of Title as having an interest in the titled land who has required or may require an Encroachment Agreement for an encroachment onto the said Municipal Lands.

"Letter of Consent" shall mean a letter from Alberta Beach authorizing a minor encroachment without the benefit of entering into a formal Encroachment Agreement.

"Minor Encroachment" shall mean improvements to a private property which encroach onto the said Municipal Lands less than 0.3m (1ft).

"Municipal Lands" shall mean collectively or individually, roads, easements, reserve parcels, and Municipally Owned Parcels.

"Real Property Report" (RPR) shall mean a legal document prepared by an Alberta Land Surveyor that clearly shows the location of significant visible buildings and/or structures relative to the property boundaries.

"Reserve" shall mean all Municipal Reserves, Environmental Reserves, Municipal and School Reserves, as defined in Section 664-666 of the Municipal Government Act, or a Public Park.

"Road" shall mean land shown as a road on a plan of survey that has been filed or registered in a Land Titles Office, or land used as a public road, and includes a bridge forming part of a public road, any structure incidental to a public road, and may include walkways and lanes.

"Tolerance of Measurements" shall mean in this policy, shall take into consideration errors introduced by survey measurements. For the purposes of determining compliance with this policy with respect to the location of encroachments, measurements shall be rounded off to the same number of significant figures (i.e. a survey measurement between 0.25 m and 0.34 m would be rounded to 0.3 m and between 0.35 m and 0.39 m would be rounded to 0.4 m), etc.

"Utility" shall mean any one or more of the following:

- a) systems for the distribution of gas, whether artificial or natural, electricity, telephone, cable television, and oil products;
- b) facilities for storage, transmission, treatment, distribution or supply of water;
- c) facilities for the collection, treatment, movement or disposal of sanitary sewage, including pumping stations;
- d) storm water drainage facilities, including collection, treatment, pumping stations, storm water ponds, and wetlands;
- e) any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

#### **4. RESPONSIBILITIES**

##### 1. Council:

- a) make decisions on encroachments; and
- b) approve any amendments to, or any variations of, this policy.

##### 2. Chief Administrative Officer:

- a) endorse the Encroachments Agreements on behalf of Alberta Beach.

##### 3. Development Officer:

- a) respond to all requests for encroachments onto Municipal Lands;
- b) advise any landowner of the process required for obtaining consent for encroachment;
- c) review and make a recommendation to Council of all requests for encroachment;
- d) prepare and have executed a Letter of Consent or an Encroachment Agreement;
- e) enforce encroachment related bylaw offences, as appropriate; and
- f) responsible for the development, implementation, monitoring, and evaluation of this policy.

#### **5. PROCEDURE**

##### 1. All Requests for an Encroachment Agreement submitted to Alberta Beach must be accompanied by:

- a) a written request for an Encroachment Agreement;
- b) an RPR no older than five(5) years showing the encroachment; and

- c) a fee as described in the Alberta Beach Planning & Development Schedule of Fees Policy.
2. Unless an encroachment is authorized by Alberta Beach pursuant to this policy, the encroachment shall be removed from the affected Municipal Lands.
  3. Where an encroachment exists without Alberta Beach approval, the landowner(s) shall be required to remove the encroachment at his/her own expense or seek permission from Alberta Beach for the encroachment to remain.
  4. If an Encroachment Agreement is deemed acceptable by Council, an Encroachment Agreement between Alberta Beach and the landowner(s) shall be registered by caveat on the title of the landowner's land.
  5. Unless otherwise stated, an Encroachment Agreement once authorized by Alberta Beach may continue to be used providing that the size of the encroachment is not increased, and the encroachment is not added to, rebuilt or structurally altered except:
    - a) as may be necessary to remove the encroachment; or
    - b) as may be necessary for the routine maintenance of the encroachment.
  6. If an encroachment or the structure benefitting from the encroachment is damaged or destroyed to the extent of more than 75% of the replacement value of the encroachment or such structure, the encroachment shall not be repaired, replaced, or reconstructed and shall be removed from the Municipal Lands unless Alberta Beach authorized the repair, replacement, or reconstruction.
  7. Unless Alberta Beach authorizes an encroachment, Alberta Beach or the Owner shall remove the encroachment from the affected Municipal Lands, following a minimum of thirty (30) days notice or as reasonably specified by Alberta Beach in writing. All work conducted by Alberta Beach in removing an encroachment shall be at the cost of the landowner, Alberta Beach may take action to remove the encroachment and seek reimbursement from the landowner(s) for all such costs in accordance with the Municipal Government Act.
  8. Where an encroachment has been authorized by Alberta Beach, the Owner(s) shall execute the Encroachment Agreement prepared and delivered by Alberta Beach in a timeframe specified by Alberta Beach, or the encroachment shall be removed from the Municipal Lands within thirty (30) days of receiving notice to do so.
  9. Encroachments into Municipal Lands that are designated as or are part of an emergency access shall be removed from the affected Municipal Lands following a minimum of fourteen (14) days notice in writing from Alberta Beach, at the cost of the landowner.
  10. In the event that an encroachment poses clear and present danger to the public as determined by Alberta Beach, the encroachment shall be removed immediately by the landowner and at the cost of the landowner. Should the landowner, for whatever reason, be unable or unwilling to remove the encroachment, then Alberta Beach shall immediately remove it and all costs of the removal incurred by Alberta Beach shall be borne by the landowner responsible for the encroachment.

11. An Encroachment Agreement does not relieve a landowner from the responsibility to comply with all applicable Federal, Provincial, and Municipal Statutes, Regulations, Orders, Bylaws, and Policies.
12. Notwithstanding any other provision of this policy and procedure, Alberta Beach reserves the right to limit the terms of an Encroachment Agreement, Letter of Consent, or provide for the termination of an Encroachment Agreement, Letter of Consent, or other authorization in the event that the encroachment could be affected by future plans for utilities, road widening, or other requirements.
13. The owner responsible for the encroachment shall bear all expenses, costs, liabilities, or other risks associated with the encroachment.
14. No appeals of Council's decisions will be allowed, as all decisions are final and binding.

**DEPARTMENT: COUNCIL**

**ADOPTED AND APPROVED BY COUNCIL: October 15, 2019**

**AMENDMENT DATE/RESOLUTION NO: 194-19**