



SUMMER VILLAGE OF SILVER BEACH

P.O. Box 619
Thorsby, Alberta, Canada T0C 2P0
780-985-2441

EFFECTIVE DATE: March 15, 2016

ADOPTED BY RESOLUTION #2016-023

POLICY TITLE: Encroachment Policy

POLICY STATEMENT

The Summer Village realizes private encroachments on Summer Village of Silver Beach property and easements exist and will continue to be discovered, and has established this policy as a result. The Summer Village administers or owns a variety of parcels of land including streets and reserves and also has interests in privately owned land by way of easements. On behalf of the citizens of Silver Beach, the Summer Village Council must ensure that encroachments do not adversely affect these lands and easements or the Summer Village's ability to maintain effective services; restrict public access and enjoyment of lands for public use; or create a liability for the municipality. Identified owners of the encroachment may be allowed to keep the encroachment by entering into an agreement or, alternatively, remove the encroachment.

The following Encroachment Policy will assist the public and enable the Summer Village to manage encroachments effectively. It is intended to provide a more consistent approach in processing applications, enforcing the policy, and protecting and indemnifying the Summer Village wherever encroachments have been identified.

1.0 DEFINITIONS

- (a) **Council** means the Municipal Council for the Summer Village.
- (b) **Developer Fence** means a fence installed under a subdivision or development agreement.
- (c) **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 Summer Village.
- (d) **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 structures or fences as required by the Summer Village), that extends on, over or under municipal lands and shall include, but is not limited to the following:
 - (i) Buildings and all projections (including eaves, cantilevers, etc.) and siding.
 - (ii) Sheds, (including those attached to a dwelling and/or fence).
 - (iii) Fences.
 - (iv) Asphalt, concrete or brick sidewalks, curbs, parking pads, aprons or driveways.
 - (v) Structures (including decks, stairs patios, etc.).
 - (vi) Retaining walls and extension of adjacent lands by fill.
 - (vii) Swimming pools and hot tubs.
 - (viii) Shrubs, trees, gardens or other organic landscape materials planted in Summer Village Parcels.
 - (ix) Hard landscaping (including, but not limited to, retaining walls, structures, fire pits, planters).

- (x) Light standards.
- (xi) Signs.
- (e) **Encroachment Agreement** means an agreement (including a License of Occupation or an agreement amending an existing utility right-of-way) between the applicant and the Summer Village authorizing an encroachment and shall, among other things, include:
 - (i) location and identification of the encroachment;
 - (ii) term;
 - (iii) termination notice;
 - (iv) cost and liability for repair and removal;
 - (v) indemnification of the Summer Village, its agents or licensees;
 - (vi) general liability insurance in the amount of at least \$2 Million which shall provide coverage to the Summer Village as a named insured;
 - (vii) a provision requiring removal following a minimum of 30 days' notice by the Summer Village.
- (f) **Fence** means a vertical physical barrier constructed to provide visual screening or to prevent unauthorized access or both.
- (g) **Municipal Lands** mean collectively or individually a street, easement, reservoir or Summer Village Parcel.
- (h) **Property Owner** means the owner of land adjacent to Municipal Lands or the owner of land encumbered by an easement, who has required or may require an encroachment agreement on the said municipal lands or easement.
- (i) **Public Utility Lot** means a parcel of land dedicated for public utilities and designated as "PUL" on a plan of survey.
- (j) **Reserve** includes all municipal reserves (MR or any of the original designates), environmental reserves (ER), municipal and school reserves (MSR) or school reserves (SR) as defined in the Municipal Government Act or a public park, recreation ground or exhibition ground as defined in the Municipal Government Act.
- (k) **Street** means any thoroughfare, highway, road, trail, avenue, viaduct, lane, alley, square, bridge, causeway, trestle, walkway or other place, which are lands administered by the Summer Village, any part of which the public is entitled or permitted to use.
- (l) **Tolerance of measurements**, when referred to 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.
- (m) **Summer Village** means the corporation of The Summer Village of Silver Beach.
- (n) **Summer Village Parcel** is any titled land the Summer Village owns or controls including a reserve, street, lane or easement.
- (o) **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;
 - (iv) Storm water drainage facilities, including collection, treatment, pumping stations, storm water ponds, and wetlands;
 - (v) Any other items that may be prescribed by the Lieutenant Governor in Council by regulation.

2.0 ENCROACHMENTS ONTO SUMMER VILLAGE PARCELS

- 2.1 Encroachments onto Summer Village Parcels shall not be allowed except for those identified in 2.4 and 2.5.
- 2.2 No permanent improvements, including (but not limited to) building and structures, compost bins, fire pits, barbeque areas, domestic lawns or ornamental landscaping and temporary uses including woodpiles, debris or garbage, excavation materials, vehicles, campers and trailer storage shall be permitted to encroach onto Summer Village Parcels.
- 2.3 Fences shall only encroach by a maximum of 0.3 metre onto Summer Village Parcels, and shall not result in the enclosure of the Summer Village Parcel so that public access is discouraged.
- 2.4 Encroachments listed below will not require an Encroachment Agreement. For these Encroachments, the Summer Village, in their sole determination, may require a letter in the form of Schedule "A," allowing the Encroachment to remain until such time as the Summer Village instructs the Property Owner responsible for the Encroachment to remove it.
 - (i) Driveways that directly connect to Silver Beach Road and Silver Bay Road in accordance with the Silver Beach Land Use Bylaw;
 - (ii) Landscaping installed by the property owner between the owner's property line and the asphalted edge of Silver Beach and Silver Bay Roads as follows:
 - (a) decorative rocks, flower beds and moveable planters that do not interfere with municipal mowing and maintenance;
 - (b) trees and shrubs that do not interfere with roadway visibility or municipal mowing and maintenance;
 - (c) lawns and landscaping that are maintained by the property owner;
 - (d) other encroachments intended to beautify and enhance the Silver Beach and Silver Bay roadways, in the sole determination of the Summer Village;
 - (iii) Encroachments the Summer Village has previously authorized by written agreement in accordance with the Municipal Government Act or other Alberta statute.
 - (iv) Driveways that lead directly to the lane behind lots 2 to 12A, Block 5, Plans 0124719 and 7821475.
- 2.5 Notwithstanding that encroachments identified in 2.4 will not require an Encroachment Agreement, Owners must obtain permission in advance from the Summer Village before placing any and all encroachments on Summer Village Parcels.
- 2.6 Unless the Summer Village authorizes an Encroachment, the Summer Village or the Owner shall remove the Encroachment from the affected Silver Beach Parcel, following a minimum of 30 days' notice in writing from the Summer Village. All work conducted in removing an Encroachment shall be at the cost of the Property Owner responsible for the Encroachment.
- 2.7 Encroachments onto Municipal Lands that are designated as or are part of an emergency access shall be removed immediately from the affected Municipal Lands upon notice in writing from the Summer Village, at the cost of the Property Owner.
- 2.8 Where an Encroachment is created by an owner granting land adjacent to a street to the Summer Village (i.e. a Dedication Agreement where an existing Encroachment is to remain), the Summer Village shall without charge permit an Encroachment Agreement to be entered into with the owner. The removal period is subject to negotiation with the Summer Village

- and would be related to the life of the Encroachment or until the Summer Village requires road widening.
- 2.9 An Encroachment Agreement authorized by the Summer Village and executed by a Property Owner shall be registered by caveat on the title of the Property Owner's land.
 - 2.10 An encroachment shall not interfere with the Summer Village's or other utility company's need to access the easement.
 - 2.11 All expenses, costs, liabilities, or other risk associated with an Encroachment shall be borne by the owner responsible for the Encroachment.
 - 2.12 An Encroachment once authorized through an Encroachment Agreement or by letter in the form of Schedule "A" by the Summer Village may continue to be used, but the Encroachment shall not be added to, rebuilt or structurally altered except;
 - (i) as may be necessary to remove the Encroachment; or
 - (ii) as may be necessary for the routine maintenance of the Encroachment.
 - 2.13 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 be removed unless the repair or reconstruction is authorized by the Summer Village.
 - 2.14 Existing Encroachments authorized by Licenses of Occupation, Encroachment Agreements, Maintenance and Indemnity Agreements, or any other existing agreement with the Summer Village authorizing an Encroachment, shall be deemed to be an authorized Encroachment subject to the terms of the existing agreement.
 - 2.15 Notwithstanding any of the above, in the event that an Encroachment poses clear and present danger to the public as determined by the Summer Village, the Encroachment shall be removed immediately by the Property Owner and at the sole cost of the Property Owner. Should the Property Owner, for whatever reason, be unable or unwilling to remove the Encroachment, then the Summer Village shall immediately remove it and all costs of the removal incurred by the Summer Village shall be borne by the Property Owner responsible for the Encroachment.
 - 2.16 Encroachments onto Summer Village Parcels that do not comply with this Policy shall be removed by the Property Owner that caused the Encroachment, following a minimum of 30 days' notice in writing from the Summer Village. All work conducted in removing an Encroachment shall be at the cost of the Property Owner responsible for the Encroachment.
 - 2.17 Public or franchise utilities located within a public utility lot or an easement located on Summer Village Parcels authorized by the Summer Village will not be considered as an Encroachment.
 - 2.18 The disposition of any interest in Summer Village Parcels shall be subject to approval by the Council in accordance with the relevant provisions of the Municipal Government Act.
 - 2.19 All costs associated with disposition of an interest in Summer Village Parcels shall be borne by the Property Owner responsible for the Encroachment.

3.0 ENCROACHMENT INTO EASEMENTS AND UTILITY RIGHTS OF WAY

- 3.1 An Encroachment into an easement or utility right of way in accordance with the limitations outlined in Schedule "B" will be allowed where they do not interfere with the basic operation and maintenance of the facility, except where adjacent to or located on a Summer Village Parcel with an overhead electrical line. In cases involving overhead electrical lines, no Encroachment will be permitted.
- 3.2 An Encroachment into an easement or utility right of way not within the limitations outlined in Schedule "B" may be permitted, if deemed acceptable by the relevant 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. All costs associated with the preparation, execution and discharge of agreements shall be borne by the Property Owner responsible for the Encroachment.
- 3.3 An Encroachment into an easement or utility right of way not within the limitations outlined in Schedule "B" that is not permitted and not deemed acceptable by the relevant utility operator shall be removed by the Property Owner responsible for the Encroachment and all costs associated with the removal shall be borne by the Property Owner.
- 3.4 No Encroachment into an emergency access easement shall be permitted. All such Encroachments into emergency access easements shall be removed immediately by the Property Owner at his expense. Should the Property Owner be unable or unwilling to remove the Encroachment, then the Summer Village shall immediately remove the Encroachment and all costs associated with the removal incurred by the Summer Village shall be borne by the Property Owner.

4.0 GENERAL GUIDELINES

- 4.1 Where an Encroachment is identified, a Property Owner may make an application to the Summer Village for consideration of such Encroachment. If within:
- (i) an easement or utility right of way, it will be reviewed by the Summer Village and any affected franchise utility; or a street, it will be reviewed by the Summer Village and any affected utility; or
 - (ii) a reserve, it will be reviewed by the Summer village and it will require removal unless other alternatives are pursued as referenced in this Policy; or
 - (iii) a Summer Village Parcel, the Summer Village and any affected franchise utility will review it.

5.0 ENFORCEMENT

- 5.1 Unauthorized Encroachments and compliance with an Encroachment Agreement are enforced by a Designated Officer under the jurisdiction of relevant Summer Village Bylaws and Provincial Statutes.

6.0 ENCROACHMENT AGREEMENT FEES

- 6.1 The Summer Village may levy a fee for entering into an Encroachment Agreement, providing a letter acknowledging the Encroachment or amending a utility right of way agreement.
- 6.2 This fee shall be established by resolution of Council and may be revised from time-to- time by Council.
- 6.3 Any additional costs required to accommodate an Encroachment, including but not limited to a road closure or subdivision application or reserve disposition, shall be borne by the Property Owner responsible for the Encroachment.
- 6.4 Any costs of utility relocation or reconstruction required to accommodate an Encroachment shall be the responsibility of the Property Owner responsible for the Encroachment.

7.0 ENCROACHMENT AGREEMENT APPLICATION REQUIREMENTS

When a Property Owner applies to the Summer Village for an Encroachment Agreement, he/she shall provide the following:

- (a) an original Real Property Report detailing the property and the extent of the encroachment;
- (b) a copy of the title to the parcel;
- (c) the application fee; and
- (d) photographs of the encroachment.

Upon receipt of items (a) through (d), processing of an Encroachment Agreement will be commenced by the Summer Village. The Summer Village will respond to all Encroachment complaints and will apply this policy when encroachments are identified through normal processes and management of Municipal Lands.

SCHEDULE "A"

LETTER FORM FOR ENCROACHMENTS

Date:

Name

Address

City, Province

Re: Encroachment into Road/Reserve Parcel/Utility Right of Way

Lot _____ Block _____ Plan _____

The Summer Village has become aware of an encroachment (description of the encroachment) at the above noted property into the adjacent <Road / Reserve Parcel / Utility Right of Way>. The encroachment is within the guidelines set out in the Summer Village of Silver Beach's Encroachment Policy and requires no Encroachment Agreement. The encroachment is permitted to remain until the Summer Village notifies you that it must be removed or the encroachment needs to be replaced or substantially repaired, at which time it must then be removed to the property line.

By receipt and acknowledgement of this letter you also acknowledge that you are solely responsible for the encroachment and agree that you will, to the full extent of the law, indemnify and save harmless the Summer Village from and against any and all claims, liabilities, actions, proceeds, demands, losses, costs, charges, damages and expenses whatsoever which may be brought against or suffered by the Summer Village resulting from, attributable to or connected with the encroachment. If you are not willing to accept this responsibility, you must promptly advise the Summer Village and remove the encroachment. You are also responsible for notifying future purchasers of the property of this obligation should you sell the property in the future.

If you have any questions or concerns, please do not hesitate to contact the undersigned at 780-985-2441.

Yours truly,

Development Authority
Summer Village of Silver Beach

Please sign below to acknowledge receipt of this letter and return a signed copy to the Planning and Engineering Department at the Summer Village of Silver Beach.

Date

Property Owner Signature

SCHEDULE “B”**PERMITTED ENCROACHMENTS INTO UTILITY RIGHTS OF WAY AND
EASEMENTS**

- (i) Surface vehicle driveways and parking areas (of any material);
- (ii) Surface pedestrian sidewalks and walkways (of any material);
- (iii) Sod, seed and planted landscaping such as shrubs and other low level landscaping but excluding trees and other deep rooted vegetation;
- (iv) Fences running through a utility right of way bisected by a property line;
- (v) Portable sheds and other portable accessory buildings (not on footings) under 10 square metres (107 square feet) in size;
- (vi) Retaining walls not more than 0.2 metres in height and where not located within 2.0 metres to utility above ground surface facilities;
- (vii) Non-permanent surface improvements including:
 - (a) movable landscaping planters including any movable border material (e.g. plastic, concrete, timber sections under 0.3 metres in height);
 - (b) surface level landscape rocks not more than 0.5 metres in height;
 - (c) municipal animal proof garbage containers and concrete pads;
 - (d) Canada Post mail “superboxes” for Federal mail delivery;
 - (e) Any item constructed for municipal purposes for or by the Summer Village.

SUMMER VILLAGE OF SILVER BEACH
APPLICATION AND ENCROACHMENT FEES

EFFECTIVE MARCH 15, 2016

1. APPLICATION FEES

1.1 Application fee for circulation of encroachment permission request to the Summer Village of Silver Beach, utility companies and any other related parties, as well as the preparation of Encroachment Agreements:

1.1.1 Application for Encroachment Agreement.....\$300

1.1.2 Application for encroachments that are covered by a Letter of Consent rather than an Encroachment Agreement.....No Charge

2. ENCROACHMENT FEES

2.1 Encroachments onto Easements.....\$50

2.2 For Encroachments onto Summer Village Parcels:

2.2.1 For encroachments which do not protrude into a Summer Village Parcel by more than 0.05 meters and are covered by a Letter of Consent rather than an Encroachment Agreement\$100

2.2.2 For those encroachments which do not protrude into a Summer Village Parcel by more than 0.3 meters and which cover not more than 2 square meters.....\$100

2.2.3 For those encroachments which do not protrude into a Summer Village Parcel by more than 0.3 meters and which cover more than 2 square meters but not more than 5 square meters.....\$350

2.2.4 For those encroachments which protrude more than 0.3 meters into a Summer Village Parcel and/or which cover more than 5 square meters, the Encroachment Value equals the assessed value of the Owner's Land (dollars), divided by the area of the Owner's Land (square metres), times the area of the encroachment (square metres) according to the following calculation:

$$\frac{\text{Assessed Value of Owner's Land}}{\text{Area of Owner's Land}} \times \text{Area of Encroachmen} = \text{Encroachment Value}$$

2.2.5 The fee in 2.2.4 must be paid as an annual fee (dollars) for each year of the term of the Encroachment Agreement equal to the ATB prime rate, as of the date of the agreement, plus 1% times the Encroachment Value according to the following calculation:

$$\text{Encroachment Value} \times \text{ATB prime plus 1\%} = \text{Annual Fee}$$