

<b>Department:</b> <b>Public Works &amp; Engineering</b>	<b>Section:</b> <b>MS - Municipal Standards and Engineering</b>
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## MS-08 Encroachment Agreement

### Policy Statement

The Landowner is responsible for the placement of all fences, landscaping improvements and structures within his or her property according to the Leduc County Land Use Bylaw. Encroachments onto County lands or road right-of-ways are generally identified when a landowner is selling the property or occasionally by public complaint.

There are generally two main categories of encroachment:

1. **Fences and Landscaping Improvements** – wood post & barb wire, brick, wooden plank, wrought iron, steel pipe, or some combination of these fence materials, trees, retaining walls or other landscaping improvements and
2. **Structures** – buildings, sheds, retaining walls, swimming pools, satellites, and others.

### Policy Intent

Leduc County receives requests from private landowners to allow an encroachment to remain on the road right-of-way or a County owned parcel of land. Alberta Land Titles permits the registration of an encroachment agreement executed by the owner (County responsible for road right-of-ways) for a parcel of land to permit the encroachment of an improvement made on an adjoining parcel of land. A Real Property Report prepared by an Alberta Land Surveyor (or another acceptable land survey) is required to verify the encroachment and must accompany the document.

The Encroachment Agreement is merely a form of a license, where by the encroaching party is granted the right to use a portion of the County's property or a road right-of-way. An Encroachment Agreement does not convey an interest in the land, but merely provides for the right to do something on a parcel of land without either possessing or acquiring an interest in that land.

### Service Objective/Standard

1. The landowner with an encroachment on the road right-of-way or a County owned parcel of land must submit:
  - a letter requesting to enter into an Encroachment Agreement,
  - payment of an **Administration Fee in the amount of \$300.00** (refundable if encroachment is not authorized),
  - the County will consider the request as one application when there are more than one encroachments (ie) road and municipal reserve
  - (if available) a Real Property Report prepared by an Alberta Land Surveyor(or another acceptable land survey) to verify the encroachment.
2. An initial review of the request by Administration will determine if there are any other means to satisfy the encroachment concern (ie) lease of road allowance, road closure or other.

Approved Date:	Motion No:	Page No.
	47-00	1 of 2

**Department:**  
**Public Works & Engineering**

**Section:**  
**MS - Municipal Standards and Engineering**

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3. County Administration will evaluate the application for an Encroachment Agreement(s) with consideration for such factors as public safety, future development plans, environment/wildlife sensitivities, existing or future requirements of utilities, existing easements and any other factor relevant to the encroachment. If the encroachment is not feasible the applicant will be notified (refer to 5.0 Non-Approval of Encroachment).
4. Administration decides to grant the encroachment then the Office of the County Manager will prepare an encroachment agreement and forward to the applicant for review. **The applicant will be required to pay additional fees and complete a legal land survey if not previously provided.**
5. If not previously submitted, the landowner must submit a Real Property Report prepared by an Alberta Land Surveyor (or another acceptable land survey) to verify the encroachment. **Leduc County will consider providing a survey (not prepared by an ALS at County standard) at a minimum cost of \$500.00.**
6. The Applicant will provide a payment to Leduc County based on the following:
  - All costs incurred by County to complete the Encroachment Agreement such as: Land Titles registration, legal fees, advertising costs (municipal reserves only) and any other costs. Initial costs will be estimated and final costs will be verified with the applicant and any differences rectified between the applicant and the County.
  - **The Applicant will pay a one time cost for the private use of the encroachment area.** This cost will be calculated as follows:
    - A x PMV x 10% (minimal cost \$50.00)**
    - A** means area of encroachment.
    - PMV** the Assessment Department will determine the market value of the property encroached upon % percent charged by Leduc County.
7. Upon the Office of the County Manager receiving the payment from the Applicant and completion of all required documentation, the proper signing officers of the County are authorized and empowered to sign and seal all encroachment agreements.
8. The Office of the County Manager will prepare and register a caveat against the property to which the encroachment has occurred to provide notice and permanent record of the County's approval of the encroachment.
9. The Office of the County Manager will maintain a record of all Encroachment Agreements entered into.
10. If permission for an encroachment is **denied** to the applicant then the Office of the County Manager will issue a notice to the property owner for the immediate removal of the encroachment and restoration of the encroached land pursuant to the County's legal interest in the land.
11. If the encroachment is not removed after a reasonable time frame from notification, County Administration may take whatever steps or legal remedies are available to the County to enforce the removal.
12. The Applicant may submit in writing to Leduc County Council an appeal requesting a review of a decision of administration.

Approved Date:	Motion No:	Page No.
	47-00	2 of 2