

**Department:**  
Public Works & Engineering

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

## **MS-09 Amending Agreement Policy for Encroachments on Utility Right of Ways (URW) or Easements**

### **PURPOSE**

The purpose of this policy is to set forth the process and procedure by which Leduc County will consider granting Amending Agreements to private landowners requesting encroachments remain on a registered Utility Right of Way (URW) or Easement.

### **DEFINITIONS**

The landowner is responsible to understand the terms of any URW or easement registered against their property.

#### **Utility Right of Way**

Section 72 of the Land Titles Act provides for an interest in land known as a utility right of way (“U.R.W.”). This interest is most commonly granted for gas and oil pipelines and for municipal utilities where there is a need for a continuous right of way under many parcels of land. In these circumstances, the common law requirement of a dominant tenement has been dispensed with by the enactment of a statutory provision to allow the granting of specified rights to specified entities. A URW is often referred to as an easement since it grants rights which are similar to rights granted in a common law easement. However, it must comply with the statutory requirements in order to be registerable. Since there is no dominant tenement, it is registered only against the land which is subject to the rights granted (i.e., the servient tenements) and once it is registered, the right to use the land in accordance with the terms of the grant remains with the grantee and its successors or assigns until a release is registered.

#### **Easement**

An easement is a right in the owner of one parcel of land, by virtue of that ownership, to use land owned by another party for a special purpose that is consistent with a general property in the owner. An easement arises where the following four factors exist:

1. There must be a dominant tenement (which enjoys the benefit of the easement) and a servient tenement (which is burdened).
2. The easement must accommodate the dominant land. This means that some real benefit must accrue to the dominant tenement, making it a better and more convenient property.
3. The dominant and servient tenements cannot be both owned and occupied by the same person.
4. The easement must be capable of forming the subject matter of a grant. This means that the ownership of the easement can only be transferred by a grant.

### **RESPONSIBILITIES**

1. The responsibilities of the Office of the County Manager include:
  - i) To receive, review and coordinate activities related to applications for Amending Agreements between departments and to respond to all requests for such Amending Agreements.

Approved Date:	Motion No:	Page No.
	693-01	1 of 3

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

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

## **MS-09 Amending Agreement Policy for Encroachments on Utility Right of Ways (URW) or Easements**

- ii) To contact any utility company or other party that has an interest in the URW or Easement and to request their written consent to the encroachment. If consent is not granted, then the County will not grant the URW or Easement.
  - iii) To prepare and execute an amending agreement related to the encroachment, if approved.
  - iv) To ensure appropriate documentation is registered at the Land Titles office to provide notification of the County's consent to an encroachment.
  - v) To maintain an inventory of all Amending Agreements for URW Agreements and Easement Agreements entered into by the County.
2. The responsibility of the Public Works & Engineering Department:
    - i) To provide the technical support to inspect and review all requests for encroachments onto URW or easements.
    - ii) To recommend if an amending agreement is to be authorized and to advise the County Clerk to proceed with appropriate documentation if authorization is obtained.
  3. The responsibilities of the Planning and Development Department shall include:
    - i) To advise landowners of the County process when an encroachment is identified during the application process for a Development Permit or Requests for Compliance Certificates.
  4. The responsibilities of Leduc County Council include:
    - i) To review any amendments to or any variations of this policy.
    - ii) Applicants may submit, in writing to Leduc County Council, an appeal requesting a review of a decision of County Administration.

### **Application Process**

1. An application for an Amending Agreement must include:
  - i) letter requesting to enter into an Amending Agreement to allow the encroachment(s);
  - ii) payment of an Administration Fee in the amount of \$300.00 (refundable if encroachment is not authorized);
  - iii) the County will consider the request as one application when there are more than one encroachments; and
  - iv) (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 County Administration will determine if there are any other means to satisfy the encroachment concern.
3. If County Administration decides to grant the encroachment, the Office of the County Manager will prepare an Amending Agreement and forward it to the applicant for review.

Approved Date:	Motion No:	Page No.
	693-01	2 of 3

**Department:**  
Public Works & Engineering

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

## **MS-09 Amending Agreement Policy for Encroachments on Utility Right of Ways (URW) or Easements**

4. 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.
5. The Applicant will provide a payment to Leduc County for all costs incurred by Leduc County to complete the Amending Agreement.
6. Upon County Administration's decision to approve the application for an Amending Agreement, the receipt of any required consents, completion of all required documentation, and the receipt by the office of the county Manager of all payments from the Applicant, the proper signing officers of the County are authorized and empowered to sign and seal all Amending Agreements.
7. 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.
8. The Office of the County Manager will maintain a record of all Amending Agreements entered into.

### **Non-Approval of Encroachment**

1. If permission for an encroachment is denied (no reasons are required) to the applicant, 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 terms of the registered URW or easement.
2. 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. Any removal will be at the Applicant's sole expense.

### **Appeal Process**

1. The Applicant may submit in writing to Leduc County Council an appeal requesting a review of a decision of County Administration.

Approved Date:	Motion No:	Page No.
	693-01	3 of 3