

TOWN POLICY NUMBER: 005/2011

REFERENCE:

ADOPTED BY:

SUPERSEDES:

TOWN COUNCIL

004/2002

PREPARED BY:

EFFECTIVE DATE:

PLANNING & COMMUNITY DEVELOPMENT

February 7, 2012

TITLE: ENCROACHMENT POLICY

POLICY STATEMENT

The Town of Rocky Mountain House is committed to the equal and consistent process for dealing with encroachment issues. First and foremost in dealing with encroachments is to ensure the safety for all vehicular and pedestrian traffic within our community.

ADMINISTRATION PROCEDURE

- 1) Any individual or business or company may make application to enter into an encroachment agreement for a development or use located on Town property.

- 2) Any encroachment issue located on Town property as identified on a Real Property Report will be reviewed by the Development Officer to determine if the encroachment requires Council approval.
- 3) The Development Officer will circulate all encroachments to the CAO and applicable departments for review and comment before decision on any encroachment.
- 4) If in the Development Officer's opinion, the encroachment is small in nature and would not unduly interfere with the use and enjoyment of adjacent properties, town right-of-ways, public spaces, and/or transportation corridors, the Development Officer may deal with the encroachment issue directly with in either of the two methods listed below:
 - i) **THAT DEPENDING ON THE TYPE OF ENCROACHMENT MAY ISSUE A FORM "C" COMPLIANCE CERTIFICATE.**
 - ii) **IF THE TYPE OF ENCROACHMENT IS DEEMED TO WARRANT AN ENCROACHMENT AGREEMENT THEN THE APPLICANT MUST ENTER INTO AN ENCROACHMENT AGREEMENT FOLLOWING "SCHEDULE A" AS A TEMPLATE.**
- 5) If method 4. (ii) above is elected, an encroachment agreement following the template in "Schedule A" will be drafted and forwarded the CAO for signature.
- 6) If in the Development Officer's opinion, the encroachment requires Council review and approval, the application shall be referred by Administration to Town Council to be dealt with in either of one of the three methods listed below:

*Note: Administration will prepare a comprehensive report for Council's consideration.
The fee for processing each encroachment that requires Council approval will be \$50.00.*

- (i) THAT THE ENCROACHMENT IS NOT ALLOWED AND MUST BE REMOVED AT THE APPLICANT’S EXPENSE.**
 - (ii) THAT DEPENDING ON THE TYPE OF ENCROACHMENT COUNCIL MAY AUTHORIZE FORM “C” COMPLIANCE CERTIFICATE TO BE ISSUED.**
 - (iii) IF THE TYPE OF ENCROACHMENT IS DEEMED BY COUNCIL TO WARRANT AN ENCROACHMENT AGREEMENT THEN THE APPLICANT MUST ENTER INTO AN ENCROACHMENT AGREEMENT FOLLOWING “SCHEDULE A” AS A TEMPLATE**
- 7) Failure of an applicant to proceed with a letter to process an encroachment issue will automatically result in a Stop Order being issued and enforced.

“SCHEDULE A”

AGREEMENT MADE THIS _____ DAY OF _____,
BETWEEN:

TOWN OF ROCKY MOUNTAIN HOUSE

a Municipal Corporation
(hereinafter referred to as “the Grantor”)

OF THE FIRST PART

-and-

(hereinafter referred to as “the Grantee”)

OF THE SECOND PART

WHEREAS the Town of Rocky Mountain House, the Grantor herein, is the owner of that property described as:

EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as “the Servient Tenement”);

AND WHEREAS the Grantee is the owner of that property adjoining the Servient Tenement described as:

EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as “the Dominant Tenement”);

AND WHEREAS there is now or will be an encroachment of certain improvements from the Dominant Tenement to the Servient Tenement as follows:

(hereinafter referred to as “the Encroachment”)

AND WHEREAS the parties are agreed that the Encroachment will be allowed to exist and continue subject to the terms of this Agreement, over that portion of the Servient Tenement described as follows:

(hereinafter referred to as “the Encroachment Area”);

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1.0 GRANT

1.1 In consideration of the sum of **ONE DOLLAR (\$1.00)** and other good and valuable consideration to be paid by the Grantee to the Grantor, the Grantor grants to the Grantee a privilege of use over the Encroachment Area of the Servient Tenement for the Encroachment, subject to the terms and conditions contained herein.

2.0 TERM

2.1 The term of the privilege of use hereby granted shall commence as of the date of execution of this Agreement, and shall continue until such time as it expires or is terminated pursuant to Paragraphs 2.2 or 2.3 hereof.

2.2 The privilege granted to the Grantee by the Grantor pursuant to this Agreement may be revoked without cause by the Grantor, or its successors entitled to the Servient Tenement, at any time upon NINETY (90) days written notice to the Grantee.

2.3 Subject to the termination as allowed in Paragraph 2.2, this Agreement shall continue in full force and effect for so long as the Encroachment or any part of it continues to exist and encroach on, over or under the Encroachment Area. This privilege of encroachment granted by the Grantor to the Grantee pursuant to this agreement shall terminate immediately upon the removal of the Encroachment from the Encroachment Area, without the requirement of notice by the Grantor to the Grantee, but the Grantee shall remain liable for restoration pursuant to Paragraph 4.4. hereof.

3.0 NOTICE

3.1 Any notice to be given by the Grantee to the Grantor shall be made in writing and delivered personally to the Town Hall during normal business hours of the Town office.

3.2 Any notice to be given by the Grantor to the Grantee may be made by personally serving the registered owner, or any one of the registered owners, or any officer or employee of the registered owner if the registered owner is a corporation; or by sending the notice by mail to the address of the registered owner as shown on the records of the Town of Rocky Mountain House. If served by mail, notice shall be deemed to be received on the fifth day following such mailing.

4.0 USE OF THE ENCROACHMENT AREA

4.1 No use shall be made of the encroachment area by the Grantee except for the purposes specifically allowed and granted herein.

4.2 The Grantee hereby covenants and agrees that it shall not make any additions or modifications to the Encroachment, except for normal maintenance and painting, without the prior express consent of the Grantor.

4.3 The Grantee hereby covenants and agrees that the Encroachment will be kept in a good and presentable state of repair and will not be allowed to fall into disrepair,

and that it will promptly and at its own expense perform all necessary maintenance and repairs to the Encroachment, as may be from time to time required or specified by the Grantor.

4.4 In the event that the privilege granted by this Agreement is revoked pursuant to Paragraph 2.2 hereof, the Encroachment shall be completely removed from the Servient Tenement within 90 days following service of the notice referred to in Paragraph 2.2, and the Encroachment area shall be fully restored to the satisfaction of the Grantee. In the event the Encroachment is not removed and satisfactory restoration is not completed within the time set out herein, the Grantor may, without any further notice to the Grantee have the Encroachment removed and the Servient Tenement restored. Any costs incurred in such removal and restoration shall be paid upon demand by the Grantee, and failing such payment the amount shall be added to the tax roll for the Dominant Tenement and shall be deemed to be taxes and shall be recovered in the same way as arrears of taxes.

4.5 The Grantee hereby covenants and agrees that the Grantor shall have access to the Encroachment area at any time, without notice, to perform such works as the Grantor deems necessary.

5.0 INDEMNIFICATION AND INSURANCE

5.1 The Grantee hereby covenants and agrees that it shall indemnify and save harmless the Grantor from and against all claims, damages, debts, suits, dues, actions, liabilities, or causes or actions, costs or sums of monies or claims of any other nature whatsoever that it may be put to by reason of anything done or omitted to be done or any use made or permitted to be made of the Encroachment of the Encroachment Area by the owner of the Dominant Tenement or its agents, contractors, employees, invitees, or licensees.

6.0 COSTS AND EFFECT

- 6.1 The Encroachment Agreement is and shall be of the same force and effect as a covenant running with the land and shall be deemed to be a covenant running with the land and these presents, including all covenants contained herein, shall extend to and be binding upon and enure to the benefit of the parties hereto and their successors in title.
- 6.2 This agreement shall be registered against the title to the Dominant Tenement by the way of Caveat pursuant to s. 651.2 of the *Municipal Government Act* of Alberta.
- 6.3 All costs for the preparation, registration, and enforcement of this agreement and anything done in connection with this agreement, including all solicitors and court costs on a solicitor/client basis shall be paid by the Grantee, and failing such payment may be recovered as set out in paragraph 4.4. hereof.

7.0 GENERAL

- 7.1 This Agreement shall be interpreted under and governed by the laws of the Province of Alberta.
- 7.2 This Agreement shall enure to the benefit of and shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the date and year first above written.

SIGNED, SEALED AND DELIVERED

GRANTOR: TOWN OF ROCKY MOUNTAIN HOUSE

) PER:

TOWN MANAGER

) _____

GRANTEE: _____

)

) _____

WITNESS

)

) _____

WITNESS

AFFIDAVIT OF EXECUTION

CANADA) I, _____
PROVINCE OF ALBERTA) of the Town of Rocky Mountain House
TO WIT:) in the Province of Alberta

MAKE OATH AND SAY:

- 1. That I was personally present and did see _____ named in the within instrument, who are personally known to me to be the person(s) named therein, duly sign and execute the same for purposes named therein.

- 2. That the same was executed at the Town of Rocky Mountain House in the Province of Alberta, and that I am the subscribing witness thereto.

- 3. That I know the said person and they are each in my belief, of the full age of eighteen years.

SWORN before me at the Town)
of Rocky Mountain House, in the)
Province of Alberta, this ____ day) _____
of _____, _____.) WITNESS
)
)
_____)
A COMMISSIONER OF OATHS IN AND)
FOR THE PROVINCE OF ALBERTA)