

**TOWN OF LACOMBE
BYLAW 294**

Consolidation to January 13th, 2003

A Bylaw of the Town of Lacombe in the Province of Alberta to Regulate the Use and Occupation of Municipal Service Corridors.

WHEREAS, pursuant to the Municipal Government Act, R.S.A. 2000, c. M-26 s.18, the Town of Lacombe has the direction, control and management of all roads within the Town; and

WHEREAS, pursuant to the Municipal Government Act, R.S.A. 2000, c. M-26 s.61, the Town of Lacombe may grant rights with respect to its property, including property under the direction, control and management of the Town and may charge fees for the use of said properties.

NOW THEREFORE BE IT RESOLVED THAT the Council of the Town of Lacombe in the Province of Alberta duly assembled enacts as follows:

1. Purpose

The purpose of this Bylaw is:

- a. to require every person proposing to carry out work for the installation, maintenance, repair, replacement, extension or operation of Equipment in Service Corridors to obtain the Municipality's consent to any such work and to apply to the Municipality for the required Permits;
- b. to provide the Municipality with information on the type and location of Equipment situated in Service Corridors so that the Municipality can manage its Service Corridors effectively and efficiently;
- c. to establish permit and other fees to compensate the Municipality for the installation, maintenance, repair, replacement, extension or operation of Equipment as well as the ongoing presence of Equipment in Service Corridors; and
- d. to protect the Municipality from costs, damages or liability associated with the installation, maintenance, repair, replacement, extension or operation of Equipment in Service Corridors by any person.

2. Definitions

In this Bylaw,

- a. "**Alignment**" means a location specified or approved by the Municipality for the location of Equipment in a Service Corridor;
- b. "**Applicant**" means a person applying for a Permit;
- c. "**Council**" means the Council of the Municipality;
- d. "**Emergency Work**" means Work that must be completed immediately because health, safety or the provision of essential services is endangered;
- e. "**Equipment**" means any poles, cables, pipes, conduits, pedestals, antennas vaults, support structures or other similar facilities or structures;
- f. "**Municipal Manager**" means the Chief Administrative Officer of the Municipality or his/her delegate;
- g. "**Municipality**" means Town of Lacombe
- h. "**Permit**" means any one of the permits and any corresponding applications, in a form set out in Schedule "A" and/or other bylaws of the Municipality, as further modified by the Municipal Manager in any specific case;
- i. "**Person**" includes one or more individuals, partnerships, bodies corporate, unincorporated organizations, governments, government agencies, trustees,

executors, administrators or other legal representatives, other than the Municipality or its legal representatives;

- j. **"Service Corridor Agreement"** means an agreement approved by Council that contains one or more provisions for the granting of consent to a person to do Work in Service Corridors upon compliance by such person with all other applicable municipal requirements;
- k. **"Service Corridor Fees"** means the fees set out in Schedule "B" and/or other bylaws of the Municipality or the corresponding fees set out in a Service Corridor Agreement other than Service Corridor Occupancy Fees;
- l. **"Service Corridor Occupancy Fees"** means the fees set out in Schedule "C" and/or other bylaws of the Municipality or the corresponding fees and/or other consideration for the privilege of occupying Service Corridors set out by the mutual agreement of the parties to a Service Corridor Agreement in the service Corridor Agreement;
- m. **"Service Corridor Resolution"** means a resolution passed by Council granting consent for a person to do Work in Service Corridors upon compliance by such person with all other applicable municipal requirements;
- n. **"Service Corridors"** means the surface of, as well as the spaces above and below, the highways, roads, road allowances, streets, lanes, bridges, public utility lots, municipal reserves, environmental reserves, public space, public water or other public places within the jurisdiction of the Municipality, excluding any other titled lands in the name of the Municipality; and
- o. **"Work"** means the installation, maintenance, repair, replacement, extension or operation of any Equipment in Service Corridors.

3. Requirement for Municipal Consent

- 1. No person shall do any Work in Service Corridors unless the person has:
 - a. obtained the consent of the Municipality or is acting on behalf of a person who has obtained consent of the Municipality by way of a Service Corridor Resolution or a Service Corridor Agreement,
 - b. obtained all applicable Permits required by the Municipality, and
 - c. paid all applicable Service Corridor Fees required by the Municipality.
- 2. The Municipality may consent to a person doing Work in a Service Corridor, subject to such terms and conditions as are deemed appropriate as follows:
 - a. Council may pass a Service Corridor Resolution, or
 - b. Council or the Municipal Manager may approve a service Corridor Agreement.

4. Exceptions to the Requirements for Municipal Consent

The provisions of this bylaw relating to Municipal consent for work in Service corridors shall not apply to work related to electric power lines or natural gas pipelines undertaken under the provisions of Public Utility franchise Agreements or to work undertaken by the Municipality.

5. Application for a Permit

- 1. Every Applicant shall provide all of the information required for a Permit and pay the applicable Service Corridor Fees at the time that the application for the Permit is made. An application for a Permit that does not meet these requirements shall be deemed to be incomplete.
- 2. Subject to subsection 3, upon receipt of an application for a Permit, the Municipal Manager shall issue the required Permit subject to such terms and conditions as the Municipal Manager deems appropriate. The terms and conditions contained in Schedule "D" are deemed to be included in every Permit for Work in Service Corridors, unless otherwise specifically excluded.
- 3. The Municipal Manager may reject an application for a Permit where,

- a. the application for the Permit is incomplete,
 - b. the payment of all applicable Service Corridor Fees has not been made
 - c. the consent of the Municipality has not been obtained in accordance with Section 3, or
 - d. any conditions precedent to granting the Permit has not been met.
4. The Municipal Manager shall provide an Applicant whose application for a Permit is refused, written reasons for the refusal at the time that the Applicant is advised of the refusal.

6. Appeals to Council

1. Any applicant whose application for a Permit has been refused may appeal the decision of the Municipal Manager to Council by filing with the Municipal Manager, within thirty (30) days of the Municipal Manager's decision, a notice of appeal containing the Applicant's contact information, grounds of appeal and any related submissions.
2. Within thirty (30) days of the filing of an appeal notice as set out in Subsection 1, the Municipal Manager shall prepare and deliver a report to Council that shall include:
 - a. the Permit application,
 - b. the Municipal Manager's decision and reasons for any refusal to issue the Permit, and
 - c. the notice of appeal.
3. Following receipt of the report prepared by the Municipal Manager, Council shall, at such time and place as it determines, review the report described in Subsection 2 and shall:
 - a. confirm the original decision made by the Municipal Manager,
 - b. refer the matter back to the Municipal Manager and direct the Municipal Manager to reconsider the matter having regard to such considerations or directions as Council may provide, or
 - c. direct the Municipal Manager to issue a Permit on such terms and conditions as Council may determine.

7. Compliance with Municipal Consent and Permits

1. Every person who obtains the consent of the Municipality to do Work in Service Corridors shall comply with the terms and conditions of that consent.
2. Every person who obtains a Permit shall comply with the terms and conditions of that Permit, including, without limitation, terms and conditions restricting Work in the Service Corridors to the Alignments or other portion of the Service Corridors for which authorization is granted in the Permit

8. Emergency Work

A person whose Equipment is situated in a Service Corridor may arrange to have such Emergency Work done as is strictly necessary to end a situation in which the health, safety or the provision of essential services is endangered without the prior consent of the Municipality, if it is not practicable to obtain such consent prior to the commencement of the Emergency Work, provided that the person, without delay, notifies the Municipal Manager of the occurrence of the Emergency Work and provides such additional information concerning the Emergency Work and its consequences as the Municipal Manager requests.

9. Service Corridor Occupancy Fees

1. Every person whose Equipment is situated in Service Corridors is liable to pay the applicable Service Corridor Occupancy Fees in respect of the period of time during which the Equipment is situated in the Service Corridors.

2. Payment of Service Corridor Occupancy Fees does not constitute a condition precedent for the granting of municipal consent to Work in Service Corridors or for the granting of a Permit.
3. Companies governed by Telecommunications Act (Canada) shall be exempt from payment of Service Occupancy Fees set out in Schedule C of this Bylaw. (01/13/03)

10. Penalties

Every person who fails to do anything that he or she is required to do pursuant to this Bylaw or who does anything that he or she is prohibited from doing under this Bylaw is guilty of an offence and is liable upon summary conviction to fines as set out in Schedule "E".

11. Severability

If any portion of the Bylaw is, for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions, which shall remain in full force and effect.

12. Resolution of Inconsistencies

In the event of any inconsistency between any provision in this Bylaw and provision in a Service Corridor Resolution or Service Corridor Agreement, the provision in this Bylaw shall take precedence.

13. Schedules A, B, C, D, and E shall form part of this Bylaw

INTRODUCED AND GIVEN FIRST READING this 25th day of February, 2002, A.D.

GIVEN SECOND READING this 23rd day of October, 2002, A.D.

GIVEN THIRD AND FINAL READING this 23rd day of October, 2002, A.D.

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**Schedule A
Forms of Permit & Permit Application**

1. As passed by resolution of Council

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**Schedule B
Service Corridor Fees**

Service corridor fees shall include all direct costs associated with the placement of equipment within the service corridor plus an administrative fee of \$100 (one hundred dollars) per linear meter.

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**Schedule C
Service Corridor Occupancy Fees**

Service corridor occupancy fees shall be based on property value calculated in accordance with the following formula:

$A \times B / C$

Where

A = highest market value of adjacent lands

B = Bank of Canada Prime plus 2%

C = number of services within the service corridor excluding Town owned utilities

Plus an allowance for all direct and indirect costs in the continuing maintenance of such service corridors assumed by the Town. Such costs shall include by not limited to:

- Turf maintenance
- Litter control
- GIS system maintenance
- Site supervision degradation
- Site remediation
- Indirect overhead costs with respect to public works facilities and supervisory staff and facilities, parks supervisory staff and facilities, and administrative staff and facilities

In the case where Service corridor are used for transportation of dangerous goods the aforementioned fee shall be double the calculated rate.

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**Schedule D
Permit Standard Terms and Conditions**

1. These standard terms and conditions apply to all Work conducted by or on behalf of the Applicant.
2. Unless otherwise specifically provided in these standard terms and conditions, capitalized terms herein have the same meaning given to them in Bylaw 294, "A Bylaw to regulate the Use and Occupation of Municipal Service Corridors," as amended from time-to-time.
3. All Work shall conform to all applicable federal, provincial and municipal statutes, laws and bylaws and other applicable legal requirements.
4. All Work shall be conducted and completed to the satisfaction of the Municipal Manager.
5. All Work shall be performed in a manner that safeguards and protects all other support structures, transmission lines, equipment, facilities and improvements of any kind ("Improvements") present in the Service Corridors.
6. After completion of any Work, the Applicant shall leave the Service Corridors in substantially the same condition in which they were before such Work was undertaken by the Applicant, free from nuisance and to the satisfaction of the Municipal Manager. If the Applicant fails to repair and restore any Service Corridors to the satisfaction of the Municipal Manager within two (2) days of being notified by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Applicant.
7. If the Municipality required that any Work be stopped, the Applicant shall cease such Work upon delivery of a written notice to the Applicant to that effect by the Municipal Manager.
8. The Applicant shall be at all times responsible for all Work, including the cost of such Work.
9. The Applicant's Work shall not unduly interfere with the public use and enjoyment of the Service Corridors.
10. The Applicant shall notify the Municipality promptly of any damage caused by the Applicant in connection with its Work.
11. The Municipality has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever and the Applicant hereby agrees to take the Service Corridors on an "as is" basis for the purpose of the carrying out of the Applicant's Work and the Municipality is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its Service Corridors.
12. The Applicant may be required to post security with the Municipality from time-to-time in an amount and form acceptable to the Municipal Manager to guarantee the performance by the Applicant of its obligations in connection with Work performed under this Permit. The vehicle by which such security is granted shall, in each case, specify with precision the Work that is guaranteed by the security, and the circumstances under which the Municipality may have recourse to the security. Security posted in respect of certain Work shall be released promptly by the Municipality if and to the extent that the Work is completed to the satisfaction of the Municipal Manager.
13. The Applicant shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The Municipality may, on twenty-four (24) hours written notice to the Applicant, or sooner if in the opinion of the Municipality the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Applicant where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

14. For the purpose of this provision, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal. The Applicant agrees to assume all environmental liability relating to its Work in the Service Corridors, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around Service Corridors which result from:

- a. the operations of the Applicant in, on, over, under, along, across or around the Service Corridors; or
- b. any products or goods brought in, on, over, under, along, across or around the Service Corridors by the Applicant, or by any other person with the express or implied consent of the Applicant.

15. The Municipality shall not, in connection with the Applicant's Work, be liable for any damage to the Equipment or other property of the Applicant, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Applicant except where cause by the willful misconduct or gross negligence of the Municipality or its employees.

16. The Applicant hereby indemnifies the Municipality from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Municipality in connection with the Applicant's claim as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party cause by the willful misconduct or negligence of the Applicant, its officers, employees, agents, contractors, licensees or invitees.

17. The Municipality shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with the Applicant's Work.

18. The Applicant shall, at its own expense, procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage for itself and all workers, employees, and others engaged in or upon any Work.

19. The Applicant shall maintain insurance coverage, sufficient in a mount and coverage to meet the requirements of the Municipality, as notified by the Municipal Manager from time-to-time. All such insurance policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Municipality by registered mail.

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**Schedule E
Fines**

1. For the first offense, to a fine of not less than \$50.00 (Fifty dollars) and not more than \$500.00 (Five hundred dollars), and in default of payment, to imprisonment for a term not more than six (6) months.
2. For the second or subsequent offence to a fine of not, less than \$100.00 (One hundred dollars) and not more than \$500.00 (Five hundred dollars)(, and in default of payment, to imprisonment for a term not more than six (6) months.
3. For continuance after conviction to a fine of not more than \$500.00 (Five hundred dollars) for every day the offence continues.

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