

PROPOSED

UCS2020-0228
ATTACHMENT 1

BYLAW NUMBER 9M2020

BEING A BYLAW OF THE CITY OF CALGARY REGARDING ENCROACHMENTS ONTO CITY-OWNED LAND, STREETS, AND EASEMENTS *****

WHEREAS Council considers it necessary to pass a bylaw establishing a framework for how encroachments onto City-owned land, streets, and easements will be addressed;

AND WHEREAS the Municipal Government Act, RSA 2000, c M-26, as amended, (the "Act") empowers municipalities to pass bylaws dealing with the use and management of its property, and prohibiting or regulating any development;

AND WHEREAS the *Act* empowers municipalities to pass bylaws providing for a system of permits or approvals for any development, and terms and conditions that may be imposed, establishing fees for such permits and approvals, and enforcement provisions;

AND WHEREAS section 651.2 of the *Act* empowers municipalities to permit encroachments onto a road by agreement;

AND WHEREAS section 72 of the Land Titles Act, RSA 2000, c L-4, permits the registration of encroachment agreements on the affected parcels of land;

AND WHEREAS The City recognizes its responsibility to the citizens of Calgary to maintain and operate effective and safe services and to enable public access to lands intended for public use and enjoyment;

AND WHEREAS The City recognizes the importance of upholding these responsibilities by effectively managing encroachments onto City-owned land, streets, and easements;

AND WHEREAS City-owned land, streets, and easements includes, among other things, boulevards, sidewalks, roads, bridges, alleyways, parkways, trails, lanes, utility-rights-of-way, overland drainage easements and titled parcels of land owned by The City of Calgary including, but not limited to, parks and reserve land;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF CALGARY ENACTS AS FOLLOWS:

PART I GENERAL PROVISIONS

Short Title

1. This Bylaw may be cited as the "Encroachment Bylaw".

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Definitions

2. In this Bylaw, unless context otherwise requires, the term:

- (a) “*Act*” means the Municipal Government Act, RSA 2000, c M-26, as amended;
- (b) “*certificate of title*” means the record of the title to land that is maintained by the Registrar as defined in the Land Titles Act, RSA 2000, c L-4;
- (c) “*City*” means the municipal corporation of The City of Calgary or the area contained within the boundaries of Calgary, Alberta where the context so requires;
- (d) “*City-owned land*” means any land owned by the *City* for which a *certificate of title* has been obtained or any interest in land that vests in the *City* by virtue of the *Act* or other legislation and includes *park* or *reserve land*;
- (e) “*City property or interest*” means any of *City-owned land*, *street*, or *easement* and anything included in the definition of one of those terms;
- (f) “*developer fence*” means a *fence* installed under a subdivision development agreement which is usually of a consistent style and is continuous along two or more lots and includes a *fence* that provides a buffer from a major or higher standard road or is used to separate a parcel or parcels of land from a *park* or public open space;
- (g) “*Director, Calgary Parks*” has the same meaning as in the Parks and Pathways Bylaw 11M2019;
- (h) “*easement*” means any easement granted to the *City* for any purpose and includes *utility rights-of-way* and *overland drainage easements* and which are registered on a *certificate of title*, by a registered plan under the Land Titles Act, RSA 2000, c L-4 by description or by caveat and documented by an *easement* agreement;
- (i) “*encroachment*” means anything *placed* with a fixed location on the ground or attached to something having a fixed location on the ground that extends on, over, or under a *City property or interest*, including the immediate airspace, and includes, but is not limited to, the following:
 - i. improvements as defined in the Alberta Land Surveyors’ Association Manual of Standard Practice, 2019, as amended from time to time;
 - ii. buildings and all projections including eaves, cantilevers or similar and siding;
 - iii. sheds, including those attached to a dwelling or *fence*;
 - iv. *fences*;
 - v. asphalt, concrete or brick sidewalks, curbs, parking pads, driveway aprons or driveways;
 - vi. structures such as decks, stairs, patios, pergolas, gazebos or similar;

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- vii. extension of adjacent lands by fill;
 - viii. *walls*;
 - ix. swimming pools and hot tubs;
 - x. shrubs, hedges, trees or other organic landscape materials; and
 - xi. hard landscaping including, but not limited to, structures, fire pits, planters or similar;
- but does not include sound attenuation structures required by the *City*;
- (j) “*encroachment agreement*” means an encroachment agreement or license of occupation entered into pursuant to the Real Property Bylaw 52M2009 to approve an *encroachment* being *placed*;
 - (k) “*encroachment consent letter*” means a letter issued by the *City* to an *owner* consenting to an *encroachment* subject to the terms and conditions set out in the letter;
 - (l) “*fence*” means any barrier, railing, or upright structure typically made of wood, metal, or glass, that encloses an area or marks a boundary and includes a *developer fence* but does not include a *wall*;
 - (m) “*Manager, Land & Asset Management*” means the *City* employee appointed to the position of Manager, Land & Asset Management or that person’s designate;
 - (n) “*officer*” means a bylaw enforcement officer appointed pursuant to Bylaw 60M86, a peace officer appointed pursuant to the *Peace Officer Act*, SA 2006, c P-3.5, or a police officer under the *Police Act*, RSA 2000, c P-17;
 - (o) “*overland drainage easement*” means a *City easement* for the construction, operation, inspection, maintenance, repair and replacement of any facility or facilities for the drainage or control of storm water including, but not limited to:
 - i. a grass swale;
 - ii. a concrete or asphalt walkway, gutter, or swale;
 - iii. a drainage control *fence* or structure; and
 - iv. the sloping and contouring of land to facilitate the drainage or control of storm water;
 - (p) “*owner*” means a *person* shown as an owner of a property on a *certificate of title*, and, in relation to a specific *encroachment*, is the *person* whose property:
 - i. is encumbered by a *City property or interest* upon which the *encroachment* is *placed* in whole or in part;
 - ii. benefits from the *encroachment placed* upon an adjacent *City property or interest*; or

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- iii. the *encroachment* originates from;
- (q) “*park*” means a public space controlled by the *City* and set aside as a *park* to be used for rest, recreation, exercise, pleasure, amusement, cultural heritage, education, appreciation of nature, and enjoyment and includes:
 - i. playgrounds;
 - ii. cemeteries;
 - iii. natural areas;
 - iv. sports fields;
 - v. pathways;
 - vi. trails; and
 - vii. park roadways;but does not include golf courses;
- (r) “*person*” means an individual or a business entity including a firm, partnership, association, corporation or society;
- (s) “*place*” or “*placed*” means any type of action taken to construct, create, erect, or build, or cause to be constructed, created, erected, or built, a portion or all of an *encroachment* and includes any act of planting or gardening;
- (t) “*reserve land*” means any parcel designated as Municipal Reserve, Environmental Reserve, Municipal and School Reserve, School Reserve, Conservation Reserve or Community Services Reserve, as defined in the *Act*, or designated as “reserve” as defined by any former Planning Acts, including, but not limited to the former *The Planning Act* RSA 1970 c 276 and *The Planning Act* SA 1977 c 89 or noted as Community Reserve on a *certificate of title*;
- (u) “*restrictive covenant*” means an agreement that restricts the use or occupancy of a property;
- (v) “*sign*” means an inscribed board, bill, placard, poster, banner, flag or device which is intended to promote anything or inform anyone;
- (w) “*street*” means any thoroughfare, highway, road, roadway, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway, or other place, any part of which the public is ordinarily entitled or permitted to use for the passage or parking of vehicles and includes sidewalks, ditches, and boulevards;
- (x) “*utility provider*” means the *City* or a third party utility provider that operates one or more of the following: water, sewer, electrical distribution and/or transmission lines, thermal or other energy services, telecommunication lines, shallow utilities,

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oil and natural gas lines, or transit infrastructure and who has authority to access and use a *utility right-of-way* to construct, install, maintain, repair, replace and operate its utility infrastructure pursuant to the Municipal Rights-of-Way Bylaw 17M2016 and/or pursuant to a *utility right-of-way agreement*;

- (y) “*utility right-of-way*” means a utility right-of-way that contains any *utility provider* lines, systems, infrastructure or other facilities relating to any one or more of the following, which is registered on the *certificate of title*, by a registered plan pursuant to the *Land Titles Act*, RSA 2000, c L-4 or by description and documented by a *utility right-of-way agreement* granted to the *City* for:
 - i. systems for the production or distribution of gas, whether artificial or natural;
 - ii. the distribution or transmission of electricity, telephone, cable, television or telecommunications;
 - iii. transit infrastructure;
 - iv. facilities for storage, transmission, treatment, distribution or supply of water;
 - v. facilities for the collection, treatment, movement or disposal of sanitary sewage, including but not limited to pipes, force mains, and pumping stations; and
 - vi. the drainage, collection, treatment, movement or disposal of storm water, including but not limited to collections devices, drainage swales, pipes, pumping stations, storm water ponds and wetlands, except those facilities within an *overland drainage easement*, that are regulated under Drainage Bylaw 37M2005;
- (z) “*utility right-of-way agreement*” means an agreement documenting a *utility right-of-way* granted to the *City* for the construction, installation, maintenance, repair, replacement and operation of a *utility provider’s* utility infrastructure;
- (aa) “*wall*” means both structural and non-structural walls including:
 - i. structural support walls, retaining walls or any other walls constructed for a purpose other than aesthetics; and
 - ii. decorative walls constructed of stone or other material erected for the sole purpose of providing a decorative and/or landscape feature;
- (bb) “*written authorization*” means an authorization provided in writing to approve an *encroachment* made by either:
 - i. the *Manager, Land & Asset Management* for *encroachments* onto *City-owned land, streets, or easements*; or

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ii. the *Director, Calgary Parks* for *encroachments* onto a *park*;

and includes, but is not limited to, an *encroachment agreement*, *encroachment consent letter*, or a stamped Real Property Report.

Interpretation

3. (1) Specific references to laws in this Bylaw are meant to refer to the current laws applicable within the Province of Alberta as at the time this Bylaw was enacted and as they are amended from time to time, including successor legislation.
- (2) Each provision of this Bylaw is independent of all other provisions and if any provision is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this Bylaw remain valid and enforceable.
- (3) In this Bylaw, words in the singular include the plural and words in the plural include the singular.
- (4) Any word used in the definition of *street* in section 2 above and that is not defined in this Bylaw should be read as incorporating the definition of that word set out in the Street Bylaw 20M88.
- (5) In the event of conflict between a provision of this Bylaw and another *City* bylaw, the provision that is the most restrictive in relation to *encroachments* prevails.

Exclusions and Limitations

4. (1) This Bylaw applies to all *encroachments* which currently exist at the time this Bylaw is passed, regardless of when they were first *placed*, as well as all *encroachments placed* after this Bylaw is passed, except for the following which are excluded:
 - (a) *signs* onto a *City property or interest*;
 - (b) *encroachments* onto *restrictive covenants*.
- (2) Nothing in this Bylaw relieves a *person* from complying with any federal or provincial law, other *City* bylaw or any requirement of any lawful permit, order, restriction on a *certificate of title* or license.

PART II **PROHIBITIONS AGAINST ENCROACHMENTS**

5. (1) A *person* must not *place* or allow to be *placed* an *encroachment* onto a *City property or interest* without the *written authorization* of the *Manager, Land & Asset Management* in respect of that *encroachment*.

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- (2) Notwithstanding any other provision in this Bylaw, a *person* must not *place* or allow to be *placed* an *encroachment* onto *reserve land*.
- (3) Notwithstanding any other provision in this Bylaw, a *person* must not *place* or allow to be *placed* an *encroachment* onto a *park* without the *written authorization* of the *Director, Calgary Parks*.
- (4) An *owner* must not allow an *encroachment* to remain onto a *City property or interest, reserve land or park*, after receiving a removal notice pursuant to Part V.

PART III

MANAGER, LAND & ASSET MANAGEMENT AND DIRECTOR, CALGARY PARKS

Authority of Manager, Land & Asset Management

- 6. The *Manager, Land & Asset Management* may:
 - (a) provide *written authorization* for *encroachments* on such terms, conditions, and duration as the *Manager, Land & Asset Management* considers appropriate for the circumstances;
 - (b) decide what form of *written authorization* is appropriate for a particular *encroachment*; and
 - (c) issue rejection letters and removal notices pursuant to Part V of this Bylaw.
- 7. (1) The *Manager, Land & Asset Management* may approve *encroachment* guidelines that contain procedures and considerations for receiving and reviewing applications for *encroachments*, including:
 - (a) setting out the process and fees for receiving applications for *encroachments* and requirements for the form and content of the applications to be considered complete;
 - (b) specifying factors that may be considered in deciding whether to approve an application for an *encroachment*;
 - (c) setting the amount of one-time, daily, monthly, and/or annual fees or charges for *encroachments*;
 - (d) setting the standard form, terms, and conditions of an *encroachment* application and *written authorization*; and
 - (e) specifying the form and content of rejection letters and removal notices in response to applications for an *encroachment*.
- (2) The *Manager, Land & Asset Management* may amend or revoke all or any part of the *encroachment* guidelines at any time.

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8. The *Manager, Land & Asset Management* may consider the following when deciding whether to approve an application and issue *written authorization*:
 - (a) The interests of the *City* and the citizens of Calgary;
 - (b) Whether there is a reason to refuse as set out in section 13; and
 - (c) Any considerations listed in approved *encroachment* guidelines.
9. Nothing in this Part or any approved *encroachment* guidelines precludes the *Manager, Land & Asset Management* from including other terms and conditions, varying any standard terms and conditions, or modifying the form and content of a *written authorization*, in any particular case that in the Manager's opinion is necessary for the specific *encroachment* under consideration.
10. The *Manager, Land & Asset Management* may delegate any or all of the powers granted to the *Manager, Land & Asset Management* pursuant to this Bylaw at any time.

Authority of Director, Calgary Parks

11.
 - (1) The *Director, Calgary Parks* may provide or terminate *written authorization* for an *encroachment* into *parks* on such terms, conditions and duration as the Director considers appropriate.
 - (2) The *Director, Calgary Parks* may issue rejection letters and removal notices for an *encroachment* into *parks* pursuant to Part V of this Bylaw.
 - (3) The *Director, Calgary Parks* may delegate any or all of the powers granted to the *Director, Calgary Parks* pursuant to this Bylaw at any time.

PART IV **RESPONSIBILITIES OF** **PERSONS PLACING ENCROACHMENTS**

12.
 - (1) Any *person* who wishes to *place* an *encroachment* onto a *City property or interest* must file a completed application for an *encroachment* with the *Manager, Land & Asset Management*.
 - (2) An *owner* must file a completed *encroachment* application with the *Manager, Land & Asset Management*.
 - (3) An *owner* must comply with the terms and conditions of any *written authorization*.
 - (4) An *owner* who receives a rejection letter must not *place* the *encroachment*, and if applicable, must remove any *encroachment* already *placed*, within thirty (30) days of receiving the letter.

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- (5) An *owner* who receives a notice of removal must remove the *encroachment* and restore the impacted area in accordance with the requirements and timeframe set out in the notice.
- (6) An *owner* who receives a rejection letter or removal notice must undertake any removal and restoration work at their sole cost and expense.

PART V **DENIAL OF APPLICATIONS, REMOVAL NOTICES, AND** **TERMINATION OF AGREEMENTS**

Encroachment Application Refused

- 13. Notwithstanding anything in this Bylaw, the *Manager, Land & Asset Management* must refuse to approve an *encroachment* application and must issue a rejection letter if, in the Manager's opinion, the proposed or existing *encroachment*:
 - (a) interferes with the safety of the public, the *City* or a *utility provider*;
 - (b) interferes with the *City's* ability to access, maintain and operate services on the *City property or interest*;
 - (c) interferes with a *utility provider's* ability to access, maintain and operate its utility infrastructure on a *City property or interest*;
 - (d) interferes with the public's ability to access *City-owned land* intended for public use, for its use and enjoyment; or
 - (e) is not in the best interests of the *City* or the citizens of Calgary.
- 14.
 - (1) Where the *Manager, Land & Asset Management* denies an application for an *encroachment* after receiving a completed *encroachment* application the *Manager, Land & Asset Management* must issue the applicant a rejection letter.
 - (2) A rejection letter must include the *Manager, Land & Asset Management's* reasons for refusing the application.

Termination of Written Authorization

- 15. Where the *Manager, Land & Asset Management* or the *Director, Calgary Parks* has given notice that it is terminating a *written authorization* entered into under this Bylaw or an *encroachment agreement* or grandfathered *written authorization* entered into prior to this Bylaw being passed, the notice will be sent to the current *owner* and that *owner* must remove the *encroachment* within thirty (30) days.

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Notice of Removal

16. Where the *Manager, Land & Asset Management* or the *Director, Calgary Parks* believes that an *encroachment* exists that should be removed, either may issue a notice to the *owner* requiring one or more of the following:
- (a) that the *owner* remove the *encroachment* within a certain timeframe;
 - (b) that specific work standards and specifications be met in any demolition, construction, or landscaping done to remove the *encroachment*;
 - (c) that the restoration of the impacted area on the *owner's* property and the *City property or interest* be done to specific standards and specifications to ensure health and safety; and
 - (d) that the *person* doing the removal and restoration have insurance naming the *City* as an additional named insured and has agreed to indemnify the *City* for any losses arising from their work.

PART VI **OFFENCES, PENALTIES, AND REMEDIAL ORDERS**

Offences

17. (1) Any *person* who contravenes any provision of this Bylaw by doing any act or thing which the *person* is prohibited from doing, or by failing to do any act or thing the *person* is required to do, is guilty of an offence pursuant to this Bylaw.
- (2) Any *person* who is convicted of an offence pursuant to this Bylaw is liable on summary conviction to a fine not exceeding \$10,000 and in default of payment of any fine imposed, to a period of imprisonment not exceeding six (6) months.
- (3) All violations of this Bylaw which are of a continuing nature will constitute a separate offence for each day the offence continues.
- (4) An *owner* is guilty of an offence referred to in this Bylaw whether they caused or allowed the *encroachment* to be initially *placed*.

Enforcement

18. (1) Where an *officer* believes that a *person* has contravened any provision of this Bylaw, the *officer* may commence proceedings against the *person* by issuing a violation ticket in accordance with the Provincial Offences Procedure Act, RSA 2000, c P-34.
- (2) This section does not prevent any *officer* from issuing a violation ticket requiring a court appearance of the defendant, pursuant to the provisions of the Provincial Offences Procedures Act, RSA 2000 c P-24, or from laying an information in lieu of issuing a violation ticket.

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Penalty

19. (1) Where there is a specified penalty listed for an offence in Schedule A to this Bylaw, that amount is the specified penalty for the offence.
- (2) Where there is a minimum penalty listed for an offence in Schedule A to this Bylaw, that amount is the minimum penalty for the offence.
- (3) On conviction of an offence that is of a continuing nature, the penalty is the amount set out in Schedule A of this Bylaw in respect of the offence of each day, or part of a day, that the offence continues.
- (4) The levying and payment of any fine or the imprisonment of any period provided in this Bylaw shall not relieve a *person* from the necessity of paying any fees, charges, or costs from which that *person* is liable under the provisions of this Bylaw or any other bylaw.

Remedial Orders

20. (1) Where a *person* has contravened any provision of this Bylaw, a remedial order may be issued by an *officer* requiring the *person* to remedy the contravention pursuant to section 545 of the *Act*.
- (2) A remedial order issued pursuant to section 545 of the *Act* must include the following:
 - (a) indicate the *person* to whom it is directed;
 - (b) identify the property to which the remedial order relates by municipal address or legal description;
 - (c) identify the date that it is issued;
 - (d) identify how the *encroachment* fails to comply with this or another bylaw;
 - (e) identify the specific provisions of the Bylaw that is being contravened;
 - (f) identify the nature of the remedial action required to be taken to bring the property into compliance;
 - (g) identify the time within which the remedial action must be completed;
 - (h) indicate that if the required remedial action is not completed within the time specified, the *City* may take whatever action or measures are necessary to remedy the contravention;
 - (i) indicate that the expenses and costs of any action or measures taken by the *City* under this section are an amount owing to the *City* by the *person* to whom the order is directed pursuant to section 549(3) of the *Act*;

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- (j) indicate that the expenses and costs referred to in this section may be attached to the tax roll of the *owner's* property if such costs are not paid by a specified time;
 - (k) indicate that an appeal lies from the remedial order to the License and Community Standards Appeal Board, if a notice of appeal is filed in writing with the City Clerk within fourteen days of the receipt of the remedial order.
- (3) A remedial order issued pursuant to this Bylaw may be served:
- (a) in the case of an individual:
 - i. by delivering it personally to the individual;
 - ii. by leaving it for the individual at their apparent place of residence with someone who appears to be at least 18 years of age;
 - iii. by delivering it by registered mail to the individual at their apparent place of residence; or
 - iv. by delivering it by registered mail to the last address of the individual who is to be served as shown on the records of the Registrar of Motor Vehicle Services in Alberta;
 - (b) in the case of a corporation:
 - i. by delivering it personally to a director or officer of the corporation;
 - ii. by delivering it personally to any *person* apparently in charge of an office of the corporation at the address held out by the corporation to be its address; or
 - iii. by delivering it by registered mail addressed to the registered office of the corporation.
- (4) If, in the opinion of a *person* serving a remedial order, service of the remedial order cannot be reasonably effected, or if the *person* serving the remedial order believes that the *owner* of the property is evading service, the *person* serving the remedial order may post the remedial order:
- (a) at a conspicuous place on the property to which the remedial order relates;
 - (b) at the private dwelling place of the *owner* of the property to which the remedial order relates, as shown on a *certificate of title* pursuant to the Land Titles Act RSA 2000, c L-4 or on the municipal tax roll; or

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- (c) at any other property owned by the *owner* of the property to which the remedial order relates, as shown on a *certificate of title* pursuant to the *Land Titles Act* RSA 2000, c L-4 or shown on the municipal tax roll;

and the remedial order shall be deemed to be served upon the expiry of 3 days after the remedial order is posted.

- (5) A *person* who fails to comply with a remedial order within the time set out in the remedial order commits an offence.
- (6) Where the *City* effects a remedial order, *City* employees and agents may enter an *owner's* property upon reasonable notice to undertake the removal and restoration work.
- (7) The *owner* of a parcel is liable to the *City* for any costs and expenses related to the removal of an *encroachment* or other measures taken by the *City* to remedy a contravention of this Bylaw and such costs and expenses become a debt owing to the *City* and may be added to the tax roll of the *owner's* parcel where the contravention occurred on a part of the *owner's* parcel.

PART VII

TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

Grandfathering

21. (1) *Written authorization* provided prior to the passing of this Bylaw remains valid provided that the current *owner* continues to comply with the terms and conditions of the *written authorization*.
- (2) Should a grandfathered *written authorization* be terminated an *officer* may issue remedial orders pursuant to this Bylaw requiring that the *encroachment* be removed or take any other enforcement steps necessary.

Consequential Amendments

22. (1) Street Bylaw 20M88, as amended, is hereby further amended by deleting section 56.1(2) that states, "The Director, Roads may, with the approval of City Council, from time to time, specify the fees to be charged for authorization of *encroachments*, including application or license fees."
- (2) The Real Property Bylaw 52M2009, as amended, is hereby further amended by deleting the words "corporate policy on *encroachments*" in section 7(1)(e) and replacing it with the phrase "Encroachment Bylaw".
- (3) The Parks and Pathways Bylaw 11M2019, as amended, is hereby further amended by deleting section 27 that states, "A *person* must not encroach onto a *park* without express permission from the *Director, Calgary Parks*."

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- (4) The Parks and Pathways Bylaw 11M2019, as amended, is hereby further amended by deleting, under the headings indicated, the following from Schedule "A":

Section	Offence	<u>Minimum Penalty</u>	<u>Specified Penalty</u>
"27"	Encroach on a park	\$750	\$1500.00"

Coming Into Force

23. This Bylaw comes into force on the day it is passed.

READ A FIRST TIME ON _____

READ A SECOND TIME ON _____

READ A THIRD TIME ON _____

MAYOR

SIGNED ON _____

CITY CLERK

SIGNED ON _____

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SCHEDULE "A"

MINIMUM AND SPECIFIED PENALTIES

<u>Section</u>	<u>Offence</u>	<u>Minimum Penalty</u>	<u>Specified Penalty</u>
5(1) 5(2) 5(3)	Unauthorized <i>encroachments</i>	\$750	\$1500
12(3)	Failure to comply with terms and conditions	\$200	\$500
5(4) 12(4) 12(5)	Failure to remove <i>encroachment</i>	\$750	\$1500