

CITY OF CHESTERMERE
POLICY HANDBOOK

EFFECTIVE DATE: July 18, 2016	POLICY: 316
APPROVED BY: COUNCIL	SUBJECT: Encroachment Policy and Procedure
REVISED DATE:	PAGE NO.: 1 of 13
EXPIRY DATE:	POLICY TYPE: Development and Infrastructure Services

STATEMENT

The City of Chestermere recognizes that encroachments exist and will continue to be discovered on Municipal land. The city has established this policy and procedures to provide a consistent process for evaluating applications for encroachment authorization.

PURPOSE AND INTENT

PRINCIPLES

1. The City recognizes the importance in assisting the public by effectively managing Encroachments.
2. The City recognizes the importance of providing a consistent approach in processing applications for Encroachment authorizations.
3. The City must ensure that Encroachments do not adversely affect the City's ability to maintain services for public use by maintaining sufficient access to the infrastructure located within Easements or Roads upon which Encroachments exist.
4. Encroachments which are not authorized by the City shall be removed at the expense of the Owner of the Encroachment.
5. The proliferation of Encroachments into Municipal Lands shall be discouraged.
6. In the case of existing Encroachments that cannot practically be removed, the City shall obtain compensation to offset the negative effects of an undesirable Encroachment.
7. Formal authorization of Encroachments will be in the form of an Encroachment Agreement or Letter of Consent to protect the City, the Utilities, and the public when Encroachments are identified on City-owned Parcels, Roads, Easements, or Reserve Parcels.
8. The City may consider selling or leasing Municipal Lands upon which an Encroachment is located, subject to complying with the *Municipal Government Act*.

This Policy applies to all City-owned Parcels, Reserve Parcels, Roads and Easements within the corporate boundaries of the City of Chestermere.

1. **DEFINITIONS**

The following definitions apply to both the Policy and Procedures:

- 1.1 **Boulevard**
The area in the road right of way between the back of curb or edge of asphalt and edge of sidewalk or pathway.
- 1.2 **City**

The municipal corporation of the City of Chestermere, or the area contained within the City boundaries, as the context requires.

1.3 City Solicitor

Any legal counsel that is contracted by the City of Chestermere

1.4 City-owned Parcel

Any land owned by the City for which a certificate of title has been issued in accordance with the *Land Titles Act*, excluding Reserve Parcels.

1.5 Council

The Municipal Council for the City of Chestermere.

1.6 Easement

Any Utility Right of Way or other right of way on privately owned property established for the installation, construction, repair and maintenance of Utilities, or for the access and passage of the general public, identified by a registered plan or by description, and documented by a registered caveat or Easement agreement at the South Alberta Land Titles Office.

1.7 Encroachment

Anything placed, constructed or erected below, on or above the ground or attached to something placed, constructed or erected below, on or above the ground (excluding sound attenuation structures or fences for City purposes), that extends on, over or under municipal lands including, but not limited to the following:

- (a) Buildings and all projections (including eaves, footings, foundations, weeping tiles, cantilevers, and window wells etc.) and siding
- (b) Sheds (including those attached to a dwelling and/or fence)
- (c) Extensions of adjacent lands by fill or any deposit of fill
- (d) Fences
- (e) Sidewalks, curbs, parking pads, aprons or driveways, made from asphalt, concrete or brick
- (f) Structures (including decks, stairs, patios, gazebos, satellite dishes, antennas, Decorative walls, etc.)
- (g) Retaining walls
- (h) Swimming pools and hot tubs
- (i) Shrubs, trees or other organic landscape materials planted in Reserve Parcels or City-owned Parcels
- (j) Hard landscaping (including asphalt, concrete paving stones, retaining walls, structures, planters etc.)
- (k) Light standards
- (l) Permanent signs
- (m) Underground electrical wiring (excluding Utilities authorized by the City)
- (n) Underground irrigation systems, but does not include Utilities authorized by the City and located within municipal lands

1.8 Encroachment Agreement

An agreement (including an agreement amending an existing Easement Agreement) between the applicant and the City authorizing an Encroachment and shall, among other things, include:

- (a) The location and identification of the Encroachment
- (b) The Owner's responsibilities to maintain the Encroachment
- (c) Term or conditions under which the Agreement is terminated
- (d) The City's right to have access to the land
- (e) Indemnification of the City, its agent and licensees

1.9 Fence

Any enclosing barrier, wall or structure such as a chain link fence, wooden fence, or brick or stucco wall, usually located along a property line.

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- 1.10 Letter of Consent
A letter substantially in the same form as set out in Schedule "D".
- 1.11 Municipal Lands
Collectively or individually, Roads, Easements, Reserve Parcels and City-owned Parcels.
- 1.12 Owner
The person or persons registered under the Land Titles Act as the owner of the fee simple estate in the land. In the context of a Road, Reserve Parcel and City-owned Parcel, "owner" shall mean the owner of adjacent land which has an Encroachment into the Road, Reserve Parcel or City-owned Parcel.
- 1.13 Permanent Foundation
A foundation which is lasting or intended to last or remain unchanged indefinitely
- 1.14 Reserve Parcel
A parcel that is municipal reserve, environmental reserve, public utility lot, municipal and school reserve, or school reserve, as defined in the Municipal Government Act.
- 1.15 Road
Land shown as a road on a plan of survey that has been filed or registered in a land titles office, or land used as a public road, and includes a bridge forming part of a public road and any structure incidental to a public road.
- 1.16 Utilities
Any lines, systems, infrastructure or other facilities relating to any one or more of the following:
- The production or distribution of gas or oil products, whether artificial or natural.
 - The distribution or transmission of electricity, telephone, cable television or telecommunications.
 - The storage, transmission, treatment, distribution or supply of water.
 - The collection, treatment, movement or disposal of sanitary sewage, including but not limited to pipes, force mains, and pumping stations.
 - The drainage, collection, treatment, movement or disposal of storm sewer water, including but not limited to collection devices, drainage swales, pipes, pumping stations, manholes, storm water ponds and wetlands, or means the applicable Utility departments of the City or other owners of Utilities, as the context requires.
- 1.17 Utility Right of Way
A utility right of way granted pursuant to the *Land Titles Act*.

2. RESPONSIBILITIES

- 2.1 Council
(a) Receive, review, and consider for adoption this Policy and any recommended amendments thereto.
- 2.2 Administrative Committee
(a) Make recommendations to Council, from time to time, regarding any amendments to this Policy.
(b) Review and adopt procedures developed for the implementation of this Policy.

- (c) Decide on acceptability of Encroachments into Municipal Lands in accordance with 3.13, 3.14 and 3.15 of this Policy and Procedures.

2.3 Development and Infrastructure Services Department

- (a) Make recommendations to the Administrative Committee regarding this Policy and amendments thereto.
- (b) Decide on the acceptability of Encroachments through consultation with the affected City departments and Utilities in accordance with this Policy.
- (c) Administer and enforce adherence to this Policy, including the issuing of orders for the removal of unacceptable Encroachments, and advise the Administrative Committee of any material breach of this Policy.
- (d) Communicate the Policy, and related procedures, to affected City departments and Utilities.
- (e) Advise the Administrative Committee on matters of appeal related to Encroachments.

2.4 Other City Departments and Agencies

- (a) Review and make recommendations to the Development and Infrastructure Services Department on applications for Encroachment Agreements that are circulated for comment.

2.5 City Solicitor

- (a) Prepare a standard form Encroachment Agreement for use by the Development and Infrastructure Services Department.
- (b) Consider and initiate legal action, if considered advisable, against Owners who do not comply with written orders issued by the City to rectify or remove any Encroachment determined to be unacceptable by the City.

2.6 Protective Services

- (a) Enforce Encroachment related bylaw offences, as appropriate.

3. PROCEDURES

- 3.1 The Development and Infrastructure Services Department is responsible for the review, administration, circulation, and coordination of all applications for Encroachment authorization to the relevant City departments and Utilities in accordance with this Policy and Procedures.
- 3.2 Notwithstanding any other provision of the Policy and Procedures, an application for an Encroachment Agreement related to a commercial, institutional, or industrial development that is not within the guidelines set out in these Procedures shall be reviewed on its own merits by the Development and Infrastructure Services Department in consultation with all affected City departments and Utilities.
- 3.3 Unless an Encroachment is authorized by the City pursuant to this Policy and Procedures, the Encroachment shall be removed from the affected Municipal Lands.
- 3.4 Encroachments into Municipal Lands that are intended for or may be used as an emergency access shall be removed from the affected lands.
- 3.5 An application for an encroachment into an easement or road greater than 0.3m or any other form of encroachment not within Schedule "A" or "B" shall be submitted to the Development and Infrastructure Services department and circulated to all affected departments, any affected utility or agencies. If deemed acceptable, an



Encroachment Agreement (with a 30 day removal clause) will be issued.

- 3.6 Except as otherwise stated in this Policy and Procedures, where an Encroachment has been authorized by the City, an Owner shall execute an Encroachment Agreement prepared and subsequently registered by the City and pay any applicable fees, or the Encroachment shall be removed from the Municipal Lands.
- 3.7 An Encroachment Agreement between the City and the Owner shall be registered at the South Alberta Land Titles Office by caveat, subject to the Owner paying the applicable fees as set out in Section 3.17.
- 3.8 Unless an Encroachment Agreement states otherwise, an Encroachment once authorized by the City may continue to be used providing that the size of the Encroachment is not increased, and the Encroachment is not added to, rebuilt or structurally altered except:
- (a) As may be necessary to remove the Encroachment, or
 - (b) As may be necessary for the routine maintenance of the Encroachment.
- 3.9 If an Encroachment or the structure benefiting from the Encroachment is damaged or destroyed to the extent of more than 75% of the replacement value of the Encroachment or such structure, the Encroachment shall not be repaired or reconstructed and shall be removed from the Municipal Lands unless the repair or reconstruction has been authorized by the City.
- 3.10 Any Encroachment existing prior to July 1, 2016 which has been authorized by an Encroachment Agreement, or any other existing agreement with the City, shall be deemed to be an authorized Encroachment under this Policy, subject to the terms of the authorizing agreement.
- 3.11 An authorized Encroachment does not relieve an Owner from the responsibility to comply with all applicable federal, provincial and municipal statutes, regulations, orders, by-laws and policies.
- 3.12 Guidelines for Encroachments into Reserve Parcels:
- (a) An Encroachment into a Reserve Parcel is not permitted and shall be removed, unless it is permitted through the provisions of any other City policy, by bylaw or in accordance with the *Municipal Government Act*, unless authorized by the Administrative Committee
 - (b) A written application for such encroachments shall be made to the Administrative Committee for review and authorization.
- 3.13 Guidelines for Encroachments into City-owned Parcels (excluding Reserve Parcels):
- (a) Notwithstanding Section 3.5, Encroachments less than 0.05 metres into City-owned Parcels are authorized and do not require an Encroachment Agreement. At the request of the Owner, the Development and Infrastructure Services Department shall prepare a Letter of Consent in substantially the same form as set out in Schedule "D" or stamp a Real Property Report with compliance should the encroachment result from an application for a stamp of compliance, subject to the Owner paying the applicable fee as set out in Section 3.17.
 - (b) Subject to section 3.5, where an Encroachment extends into a City-owned Parcel in excess of 0.05 metres, the Owner may apply to the Development and Infrastructure Services Department for an Encroachment Agreement and the Encroachment will be considered on its own merit in consultation with the relevant City departments and Utilities.

- (c) The Owner shall remove an Encroachment from a City-owned Parcel if the Development and Infrastructure Services Department determines that the Encroachment is not acceptable.

3.14 Guidelines for Encroachments into Roads and Easements:

- (a) Notwithstanding Section 3.5 and subject to Sections 3.2, 3.3 and 3.4, Encroachments into Roads or Easements which are less than 0.05 metres, or fall within the guidelines set out in the attached Schedule "A", are authorized by the City and do not require an Encroachment Agreement. At the request of the Owner, the Development and Infrastructure Services Department shall prepare a Letter of Consent, subject to the Owner paying the applicable fee as set out in Section 3.17.
- (b) Subject to Sections 3.5, 3.15(d), 3.15(e), and 3.15(f), Encroachments into Roads or Easements which fall within the guidelines set out in the attached Schedule "B" will receive an Encroachment Agreement from the Development and Infrastructure Services Department without circulation, subject to the Owner paying the applicable fees as set out in Section 3.17.
- (c) Subject to Sections 3.5, 3.15(d), 3.15(e), and 3.15(f), Encroachments into Roads or Easements which are not within the guidelines set out in Sections 3.15(a) or 3.15(b), and were in existence prior to July 1, 2016, will be reviewed by the Administrative Committee and circulated to relevant City departments and Agencies. If it is determined that the Encroachment is acceptable, an Encroachment Agreement will be granted, subject to the Owner paying the applicable fees as set out in Section 3.17. If the Encroachment is not acceptable to the City, the Owner will be required to remove the Encroachment.
- (d) Notwithstanding any other provision of this Policy and Procedures, Encroachments affecting Roads or Easements containing well sites, gas production or high pressure gas distribution lines, surface mounted electrical equipment or overhead electrical lines shall be considered on their own merit and are not subject to the guidelines set out in these procedures.
- (e) Notwithstanding any other provision of this Policy and Procedures, an Encroachment shall not interfere with access to or use of Utilities, Easements or Roads by the City, by owners of Utilities, or by users of the Utilities, Easements or Roads. Nothing in this Policy or Procedures is intended to restrict or limit any rights in relation to the access to, or use of, Utilities, Easements and Roads affected by an Encroachment.
- (f) Notwithstanding any other provision of this Policy and Procedures, the City reserves the right to limit the term of an Encroachment Agreement, Letter of Consent or other authorization, or provide for the termination of an Encroachment Agreement, Letter of Consent or other authorization in the event that the Encroachment could be affected by future plans for Utilities, Road widening, or other requirements.

3.15 Enforcement

- (a) If, under the provisions of this Policy and Procedures, an Encroachment has not been authorized or an application for an Encroachment Agreement has not been made, the Owner shall remove the Encroachment at no cost to the City.
- (b) If the Owner refuses to remove the Encroachment or fails to apply for authorization, the City may take action to remove the Encroachment or relocate the utility (as the case may be) and seek reimbursement from the Owner for all such costs in accordance with the applicable City bylaws and policies and in accordance with the *Municipal Government Act*.
- (c) The Owner shall also be subject to any and all applicable federal, provincial and municipal statutes, regulations, orders, bylaws and policies beyond the scope of this Policy.

3.16 Application Fees and Encroachment Fees

- (a) Application Fee:

For an application for authorization of an Encroachment where it is necessary to circulate the application to City departments and Utilities: **\$100.00.**

(b) Encroachment Fees:

- (1) For Encroachments of eaves and footings of structures into Easements where the applicant can provide an approved development permit or building permit which permitted the Encroachment: **No charge.**
- (2) For Encroachments set out in Schedule "A" or which are no more than 0.05 meters and a Letter of Consent is requested: **\$50.00.**
- (3) For Encroachments allowable under Schedule "B" (no circulation required): **\$300.00.**
- (4) For Encroachments not within Schedule "A" or Schedule "B" which cover no more than 10 square metres of Municipal Lands and no significant objections were received following circulation: **\$400.00.**
- (5) For Encroachments not within Schedule "A" or Schedule "B" which cover more than 10 square metres of Municipal Lands and no significant objections were received following circulation: **\$1,000.00.**

3.17 This fee schedule may be revised from time to time with the approval of Council.

3.18 The applicant shall be responsible for all costs including but not limited to:

- (a) Fees arising from the use of Municipal Lands in accordance with an Encroachment Agreement.
- (b) Any additional costs related to the processing of an application for an Encroachment Agreement, including Road closure application, subdivision application, disposal of reserve, or other related costs.
- (c) Any costs of utility relocation or reconstruction required to facilitate an Encroachment.
- (d) The "annual taxes" shall be calculated based on the assessed value per square meter of the applicants parcel and the area of land affected by the encroachment.

4. ATTACHMENTS

- 4.1 Schedule "A" – Encroachments Not Requiring an Encroachment Agreement
- 4.2 Schedule "B" – Encroachments into Roads and Easements that Require an Encroachment Agreement (No Circulation Required)
- 4.3 Schedule "C" – Application and Review Process
- 4.4 Schedule "D" – Letter of Consent



Schedule "A"

Encroachments Not Requiring an Encroachment Agreement

Encroachments into Roads Not Requiring an Encroachment Agreement

1. Driveways or sidewalks which provide access to a residential dwelling or commercial business, excluding retaining walls or landscape structures that, in the opinion of the Development and Infrastructure Services Department, are considered to be features not directly benefiting the access or which may adversely affect access to or use of the Road.
2. Fence sections that encroach less than 0.3 metres into a Road providing no Utilities are captured within the fence sections.
3. Concrete or asphalt garage aprons encroaching less than 0.3 metres into lanes.
4. Steps which do not interfere with public sidewalks or trails and do not decrease the usable width of a lane.
5. Retaining walls less than 0.2 metres in height, encroaching less than 0.3 metres into a Road, except where the retaining wall is located adjacent any above ground surface utility pedestal, community mailbox, light post or hydrant
6. Non permanent surface improvements including :
 - (a) Movable planters including any movable border material (eg. Plastic, concrete, timber sections under 0.5m in height), except on a boulevard;
 - (b) Installation of trees require approval from the City of Chestermere Parks and Recreation Division;
 - (c) Synthetic turf;
 - (d) Natural landscaping including shrubbery, except on a boulevard;
 - (e) surface level rocks not more than 0.2 m in height, except on a boulevard;
 - (f) ground cover, except on a boulevard;
 - (g) driveways constructed in accordance with the City's Land Use Bylaw;
 - (h) where there are no sidewalks or pathways, irrigation systems may extend beyond a property line to a curb or edge of pavement.
7. Any encroachment constructed for valid municipal purposes by the City or its agents (ie. Bollards, sound barriers, developer fences, subdivision entrance signs, guard rails, etc)

Encroachments into Easements Not Requiring an Encroachment Agreement

1. Driveways or sidewalks which provide access to a residential dwelling or commercial business excluding retaining walls or landscape structures that, in the opinion of the Development and Infrastructure Services Department, are considered to be features not directly benefiting the access or which may adversely affect access to or use of the Easement.
2. Fence sections that span an Easement or encroach less than 0.3 metres into an Easement.
3. Portable/removable sheds under 10 sq. m. not constructed on a permanent foundation nor connected to utility services.
4. Retaining walls less than 0.2 metres in height, encroaching less than 0.3 metres into an Easement except where the retaining wall is located adjacent to any above ground surface utility pedestals.



5. Non permanent surface improvements including :

- Movable planters including any movable border material (eg. Plastic, concrete, timber sections under 0.5m in height);
- Natural landscaping including trees and shrubbery;
- surface level rocks not more than 0.2 m in height;
- ground cover;
- driveways constructed in accordance with the City's Land Use Bylaw;
- or irrigation systems, which extend beyond a property line to a sidewalk, curb or edge of pavement.

6. Eaves encroaching less than 0.1 metres into an Easement.



Schedule "B"

Encroachments into Roads or Easements that Require an Encroachment Agreement (No Circulation Required)

1. Notwithstanding items 2 through 8 in this Schedule, Encroachments affecting Roads and Easements containing well sites, or gas production or high pressure gas distribution lines, shall be considered on their own merit.
2. Residential footings for buildings or structures encroaching 0.3 metres or less into an Easement at a depth of more than 2.0 metres below grade, where the building or structure is not encroaching, will be authorized.
3. Where a residential building or structure does not encroach, eaves encroaching 0.6 metres or less into an Easement above a height of 2.4 metres above grade will be authorized, except where adjacent to or located on lands with an overhead electrical line.
4. Eaves into an Easement or Road for developments which have received a development permit or building permit allowing the Encroachment of the eaves.
5. Hard landscaping or retaining walls less than or equal to 0.6 metres in height encroaching less than 0.3 metres into a Road will be approved, except where adjacent to or located on lands with an overhead electrical line or high pressure gas line.
6. Where an Encroachment is created by an Owner granting land to the City for a Road or an Easement (for example, a Dedication Agreement where an existing Encroachment is allowed to remain), the City shall, without charge, permit an Encroachment agreement to be entered into with the Owner, the removal period to be negotiated as part of the purchase or dedication (and would be related to the life of the Encroachment, and the timing of road widening, if applicable).
7. Subject to any other restrictions, an Encroachment of less than 0.3 metres into an Easement (not within the guidelines set out in Schedule A), will be authorized.
8. An Encroachment that separates an Easement from the nearest Road or City-owned Parcel that:
 - (a) Forms a barrier (which includes, but is not limited to development features such as entrance features, walls and decorative fences), and
 - (b) Prevents direct access by the City,
 will be permitted provided the following conditions are met:
 - (1) It has easily removable and replaceable sections,
 - (2) The length of the sections are greater than 2.4 metres on each affected lot, and
 - (3) The support pillars encroach no more than 0.6 metres into the Easement.
9. A barrier which includes, but is not limited to, development features such as an entrance feature, wall and decorative fence, that crosses an Easement will be accepted providing:
 - (a) It has easily removable and replaceable sections,
 - (b) The length of the sections are greater than 2.4 metres on each affected lot, and
 - (c) The access to and use of the Easement is not adversely affected.

Schedule "C" Application Procedure

Applications

An application for an Encroachment Agreement shall be made to the Development and Infrastructure Services Department, where the Encroachment is not within the guidelines set out in Schedule A, or is greater than 0.05 meters and shall include the following:

- (a) A hard copy of a current Real Property Report detailing the property and the extent of the Encroachment.
 - Real Property reports(survey) may be obtained from any Alberta Land Surveyor. They provide a detailed map of a specific property. We require an original or a very clear copy (must be to scale – not reduced).
- (b) A current copy of the certificate of title for the parcel
 - Copies may be obtained from private registry companies. You need to provide the legal description of the property for which you are seeking a title.
- (c) A Letter of Intent
 - This is a cover letter that will explain the circumstances which have led you to apply for an agreement. Please highlight anything you would like brought to our attention and be sure to reference the property's address and legal description.
- (d) Fee
 - The application fee, as set out in Section 3.17.
- (e) Photographs
 - Photographs of the encroaching feature(s). This should give an idea of what the area in question looks like and clearly show the encroachment.

Copies of the City's Encroachment Policy 316 are available on our website at www.chestermere.ca under City Services/I want to/(add link)

Applications will **not be processed** if any part of these requirements is missing.

Once your application is complete, you may drop it off at:
City Hall, 105 Marina Road Chestermere,
Development and Infrastructure Services, 2nd floor

Or mail it to:
The City of Chestermere
Development and Infrastructure Services
Attention: Development Technician
105 Marina Road
Chestermere, AB T1X 1V7

Upon receipt of a complete Encroachment Application, the City will circulate your file to determine if an Encroachment Agreement will be approved.

If an Encroachment is approved, a document will be prepared for your signature and registered at the Southern Alberta Land Titles Office. The Encroachment Agreement will allow the encroachment to remain for the life of the structure. That is, the feature may be rebuilt on City land.

If an Encroachment is rejected, you will be required to remove it.

If you have any questions regarding this procedure or any of the elements required for an Encroachment Application, please contact Development and Infrastructure Services at 403-207-7075

Complaints

Encroachments identified by public complaints or by City personnel shall be referred to the Development and Infrastructure Services Department.

Schedule "D"
Letter of Consent (on letterhead)

(Easements and Roads)

(Date)

(Address of Applicant)

Subject: (Description of Encroachment and Legal Description of Property)

The City of Chestermere consents to the captioned Encroachment as outlined on the enclosed Alberta Land Surveyor's Real Property Report prepared by the firm of (name of firm) dated (date of Real Property Report), and does not require an Encroachment Agreement, subject to the terms and conditions set out in this letter.

This consent does not restrict or limit the City of Chestermere's right to construct, install, replace, remove, repair or maintain any Utilities or Roads and does not relieve the Owner of the Encroachment from any liability arising from the Encroachment. Any and all costs resulting from modification, relocation and/or removal of City facilities and services, or any damages or repairs to City facilities and services resulting from the Encroachment, shall be borne by the Owner. The City shall not be liable for any damage whatsoever to the Encroachment arising from the City's use of or operations in relation to the (utility right of way/Easement/Road/City-owned Parcel). This consent shall terminate at such time as the Encroachment is removed from the above property.

If you require further information with respect to this matter, please contact the Development and Infrastructure Services Department at 403-207-7075.

Sincerely,

(name)

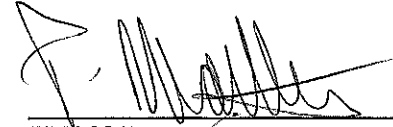
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Development and Infrastructure Services

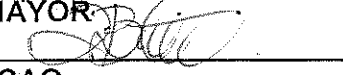


Adopted by Council: July 18, 2016

Resolution Number: 289-16



MAYOR



Deputy CAO

