



# POLICY

Policy No.12 – 101 – 21/04/19

Department: Administration

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## THIRD PARTY USES OF MUNICIPAL LAND AND IMPROVEMENTS

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### SCOPE:

This policy applies to Council, Administration, and all departments of the Town of Nanton, and users and occupiers of municipal lands for a limited, temporary or finite period of time for a specific approved use.

### PURPOSE:

The purpose of this policy is to give guidance to Administration and to assist potential users as to the options that are available for the use of municipal lands. It is intended to provide a more consistent approach in processing applications and requests, and protecting and indemnifying the Town of Nanton wherever these arrangements exist.

As an owner of lands, road allowances and improvements, the Town occasionally enters into a variety of tenures or licences with other parties. Different properties, locations and improvements, depending on the intended use, are best handled by a variety of agreements and/or legal instruments. No matter the type of agreement or instrument used, the Town must ensure that the corporate interest is protected, minimizing the potential legal liabilities and general risk posed by these arrangements. Reasonable steps should be taken to make acceptable opportunities available to the public, non-profit groups and private business. The Town must not engage in arrangements for the use of its property that violate its own bylaws or policies.

### POLICY OBJECTIVES:

The objectives of the Policy are to:

- a. Hold municipal lands in trust and to ensure public access to these lands, where applicable, is not compromised;
- b. Provide municipal land to serve specific needs that are in the public interest or provide a new revenue stream to the Town;
- c. Ensure adequate stewardship of municipal lands and improvements; and
- d. Promote the ethos that third parties which lease, license or encroach upon municipal lands and improvements are either responsible for or significantly contribute to all costs associated with occupying the property.

These objectives shall generally be met through:

**Leases** for the exclusive use and **licenses of occupation** for non-exclusive use of municipal land for the purpose of providing suitable land and/or improvements to third parties on a temporary basis.

**Encroachment Agreements** for the purpose of legally facilitating, where desirable, the extension of neighbouring or adjacent structures, improvements or uses onto municipal land.

### RELATED POLICIES:

1. Community Events Policy
2. Compliance Certificates Policy

### 3. Preventative Maintenance Policy (Section 7.0)

#### **DEFINITIONS:**

CAO – means the Chief Administration Officer (or designate) who acts as the administrative head of the municipality.

CERTIFICATE OF INSURANCE – a summary of the insured entities insurance policy with their insurer; usually a single page issued annually.

ENCROACHMENT AGREEMENT – an agreement executed by the owner of a parcel of land (the servient tenement) to permit the encroachment of some physical structure on an adjoining parcel of land (the dominant tenement).

LEASE AGREEMENT – an agreement that provides for the letting of a leasehold estate which entitles the lessee to exclusive possession of the property for a defined term.

- a legally binding contract that describes the terms of understanding between the user and the Town of Nanton, under the guidelines of this and other relevant Town of Nanton bylaws and policies. – Source Rec Facility Policy

LICENSE OF OCCUPATION – an agreement where a person is granted the right to use premises for certain purposes without becoming entitled to exclusive possession of them.

MUNICIPAL LAND – includes road right of ways (developed or undeveloped), public places, parks, recreational facilities, reserve lands and lands that are otherwise under the care and control or ownership of the Town of Nanton whether or not the lands are within a Public/Institutional land use district per the Town of Nanton Land Use Bylaw.

USER/OCCUPIER/THIRD PARTY USER – persons or entities that occupy land or property owned by the municipality by licence, lease or encroachment agreement (this policy does not apply to short term public facility rentals).

SEASONAL USE – Typically from April 15 to October 15 annually.

#### **LEGISLATIVE RESTRICTIONS:**

Granting rights over Municipal Land will proceed only in accordance with the Municipal Government Act (MGA) and the Traffic Safety Act.

- a. The Town can grant a license/encroachment agreement over a road allowance, but it cannot lease a road allowance without closing the road pursuant to Section 22 of the MGA;
- b. Pursuant to Section 13(1)(o) of the Traffic Safety Act, a council may by bylaw authorize the municipality to issue a license for the temporary use and occupation of a road allowance, but the license must be terminable on 30 days' notice;
- c. Pursuant to Section 676 of the MGA, while the Town can grant a license over environmental reserve lands, the license may not exceed a period of 3 years.
- d. Pursuant to Sections 671, 674 and 675 of the MGA, the Town cannot grant leases over municipal reserve lands or community reserve lands without taking additional steps (i.e. removing the reserve designation); therefore, only licenses may be granted (see also Section 677 of the MGA).





## **POLICY:**

### **1. ROLES AND RESPONSIBILITIES**

<b><u>Role</u></b>	<b><u>Responsibilities</u></b>
Municipal Council	<ul style="list-style-type: none"><li>• Approves policy</li><li>• Approves uses not addressed in policy</li><li>• Approve specific disposals pursuant to section 70(1) of the MGA by resolution that require advertising or are new disposals under that section</li><li>• Approves exceptions to policy in cases where the CAO is not directly authorized by the policy.</li></ul>
Chief Administrative Officer (CAO)	<ul style="list-style-type: none"><li>• Reviews and approves all agreements under this policy, but may delegate to the appropriate department manager</li><li>• Approves exceptions in standard procedure as authorized in the policy.</li><li>• Informs Council of any significant event that contravenes policy</li><li>• Set rates and hours as authorized</li><li>• Recommend related fees and rates that must be set by bylaw, including application fees</li></ul>
Corporate Services Manager or designated department manager	<ul style="list-style-type: none"><li>• Ensure that written procedures are in place</li><li>• Recommend changes to policy and guidelines</li><li>• Implement and monitor written procedures</li><li>• Liaison with users in creating license and lease agreements that include review of guidelines.</li><li>• Report any conflicts with guidelines and or policy to CAO</li></ul>
Staff	<ul style="list-style-type: none"><li>• Be knowledgeable of policies and procedures and apply them consistently in dealings with users</li><li>• Report any conflicts to the CAO for follow up</li><li>• Make recommendation to for changes to CAO</li></ul>

### **2. APPLICATION REQUIREMENTS**

- a. Applicant submittal (including submission of application form and payment of application fees, as applicable)
- b. Administrative review and public notice, as applicable
- c. Decision of Council unless delegated to the CAO for a specific negotiation (consistent with roles above)
- d. Agreement (include payment of annual rate, as applicable)

### **3. TERM/EXPIRY**

- a. term for leases and licenses of occupation offered through the Policy will be to a maximum of five (5) years unless approved by Council for a greater period. Upon expiration, the occupier/user will have to apply for a new lease or license.
- b. In the event that, prior to the expiry of a lease or license of occupation, the Town requires the Lands or any portion thereof for municipal purposes, the CAO shall request Council approval to relocate the occupier/ user - or terminate the agreement.



- c. Agreements are non-transferable to other parties.
- d. Encroachment Agreements do not require a set term, with the exception of certain temporary or seasonal encroachments. However, year-round or permanent encroachments are rendered null and void should the encroachment be removed or replaced.

#### 4. COMPLIANCE WITH AGREEMENT & LEGISLATION

- a. Occupier/users must comply with the provisions set forth in the council approved lease/license of occupation agreements.
- b. Occupier/users must comply with all municipal bylaws.
- c. Occupier/users must comply with all applicable provincial and federal legislation.
- d. Leases of portions of municipal lots, if lease arrangements of 10 or more years and likely to be renewed, should be legally subdivided by the subdivision authority as a leasehold or fee simple property at the cost of the Town or lessee.

#### 5. LIABILITY/RISK

- a. Waivers in place of insurance coverage will generally not be considered.
- b. A lease, licence or encroachment agreement will generally not be permitted where it may interfere with safe vehicle and pedestrian movements including adjacent to a highway, within 6 metres of a stop sign, or in a location where visibility or safety is deemed an issue.

#### 6. INSURANCE

- a. Users must maintain insurance policies in a form and substance and with an insurer satisfactory to the Town-which includes a commercial general liability insurance policy with an inclusive limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for death, bodily injury and property damage.
- b. Users must provide a certificate of insurance with the Town of Nanton named "Additional Insured" in the amount dependent on the nature of the event and the risk involved as determined by the Town in consultation with the Town's insurance provider.
- c. Insurance requirements will be clearly outlined to the user and included within the agreement.
- d. Users will be required to submit a new certificate of insurance annually.

#### 7. IMPROVEMENTS TO LANDS

- a. Before beginning any capital improvements or construction projects that cost more than \$5000 (capitalization reporting threshold) or that require a Development Permit, an approval from the CAO or development authority must be obtained.

#### 8. AMENDMENTS/RENEWALS

- a. Before issuing or amending a lease, license or agreement for any property subject to this policy, approval shall first be obtained from the CAO (or designate).
- b. In the event of observed modifications or encroachments that, in the view of Council or the CAO, render a significant change to the terms of the agreement or negatively impact





the public or corporate interest on adjacent property, the agreement shall either be renegotiated or terminated.

#### 9. FEES AND RATES

- a. All fees and rates, including application fees, will be as per the Town of Nanton Fees and Rates Bylaw.
- b. Fees and rates not within the Fees and Rates Bylaw shall be negotiated between the Town and the applicant.

#### 10. POWER TO REVOKE

- a. The Town retains the right to revoke any permission granted under this policy at any time where it is found that the use is creating difficulties deemed unacceptable;
- b. Receipt of any concerns with respect to public safety or any and all regulatory infractions reported to the Town by regional, provincial or federal authorities may trigger revocation.
- c. Encroachments beyond the agreed license area or encroachments within the license area that reduce or eliminate required pedestrian access where required may trigger revocation;
- d. Alteration of license area specifications without municipal consultation or consent may trigger revocation;
- e. Such scenarios may result in the revocation of the license for the subsequent year and a 2-year suspension on the licensed area's availability to that business entity.

#### 11. POLICY EXCEPTIONS

- a. Users wishing to sub-lease or sub-license to a non-signatory. Only permitted where expressly allowed within an existing agreement.
- b. This policy does not apply to facility rentals covered by separate policies and procedures.
- c. The CAO (or designate) may allow exceptions to this policy where reasonable flexibility is merited and risk to the Town is judged to be minimal.

#### 12. MUNICIPALLY-INITIATED OPPORTUNITIES

- a. The CAO or designate may, after discussion with Council, issue a public Request for Proposals for commercial temporary licenses of occupation for the following purposes:
  - i. Seasonal mobile business units or vendors in a specific municipal land location that adds value to sports or recreational events or adjacent businesses;
- b. The CAO, after consultation with Council and other potential stakeholders, may identify a specific municipal land location that is suitable for temporary or mobile business units to enter temporary license of occupation agreements with the Town, making that location's viability and associated terms known to the business community.

  
MAYOR

May 5, 2021  
Date

  
CHIEF ADMINISTRATIVE OFFICER

May 5, 2021  
Date








**Guidelines on Seasonal Downtown Commercial Patios for the Purpose of Facilitating Food, Beverage and other uses**

Policy	<a href="#">THIRD PARTY USES OF MUNICIPAL LAND AND IMPROVEMENTS</a>
Bylaw	Fees and Rates
Application	<a href="#">LOC application (nanton.ca)</a>
Principal Message	<p>The use of a portion of Town boulevards, rights-of-way and street parking spaces may be permitted for seasonal occupation, principally for the purpose of facilitating food and beverage service patios. These guidelines assume constructed patios (encouraged) but apply to the unconstructed approaches as well in terms of pedestrian provision, insurance and general safety.</p> <p>Anything that necessitates a seasonal lane or road closure will generally not be considered unless a very compelling case, supported by impacted property owners and stakeholders, can be made.</p>
Seasonal Parameters	<p>April 1<sup>st</sup> – September 30<sup>th</sup>. This is to avoid problems developing around snow accumulation, removal and sidewalk safety. Structures must be removeable.</p> <p>Unconstructed patio areas must be clearly visible for pedestrians and drivers.</p>
Dimension constraints	<p>The minimum safe width for a two-lane road is 20' (6.1 metres). Average car width is 1.8m (5.9 feet). Constructed patios in parking spots cannot extend into the 20' area of road.</p> <p>Pedestrians must be provided with a minimum of 5 feet (1.5m) of sidewalk or constructed boardwalk through or past the entire patio license area.</p> <p>Proposed areas cannot generally exceed the width of commercial frontage unless you are working in partnership with a neighbouring business. 20 feet length is the recommended maximum.</p> <div style="text-align: center;"> </div>



Insurance/ Liability	\$5,000,000 liability insurance policy, naming the Town as an additional named insured. Town may require annual inspection of any temporary structures.
Other considerations	<p>While there are no heritage-related policies or protections in place at this time in the Commercial Core, sensitivity to the facades of older buildings is strongly encouraged.</p> <p>It is very unlikely, for safety reasons, that a license would be granted for a patio in a parking spot along Highway 2 or <b>within 6 metres of a STOP sign.</b></p> <p><b>Constructed patios will require building inspections.</b></p>
Examples of approach	<div>  <p>Railed licence area within sidewalk leaving sufficient area for pedestrians (5 feet/1.5m). A constructed boardwalk may be necessary to meet this requirement.</p> <p><i>Low impact on façade.</i></p> </div> <div>  <p>Unbounded licence area within sidewalk leaving sufficient area for pedestrians (5 feet/1.5m).</p> <p><i>No impact on façade.</i></p> </div> <div>  <p>Railed/ bounded licence area in parking spaces leaving sufficient sidewalk width (5 feet/1.5m or greater) for pedestrians.</p> <p>Patio or boardwalk cannot extend more than 6.4 feet (1.95m) toward the road centre line from the curb;</p> <p><i>No impact on façade.</i></p> </div>

## Schedule 'B'


**Temporary Measures to assist the existing Nanton Food and Beverage Industry – COVID-19 TEMPORARY MEASURE**

Policy	<a href="#">THIRD PARTY USES OF MUNICIPAL LAND AND IMPROVEMENTS</a>
Bylaw	Fees and Rates
Application	<a href="#">LOC application (nanton.ca)</a> or Community Events Application
Principal Message	As we move into new food and beverage restrictions around COVID-19, we are applying some temporary support for this season, which Council will review at expiry to assess if the measures need to remain longer.
Expiry	October 31st 2021/or easing of AHS requirements that encumbrance your business
Fees	Shall generally be treated as a transitional permission for temporary non-exclusive partial road closure (parking spot) under Community Events Policy/ Traffic Bylaw, providing discretionary ability to waive fees for this purpose until expiry.
Patios	<p><i>An unconstructed patio area may be placed in an outdoor area owned by you, your landlord or the Town of Nanton as long as landlords and/or the Town are asked permission.</i></p> <p><b>Definition of patio for this schedule:</b> a delineator, cones and portable picnic tables to be placed into an outdoor patio space in a manner that conforms to any required AHS health and safety guidelines or restrictions.</p> <p>The patio may be placed in a municipal parking space in front of your establishment, adhering to relevant siting needs referenced in schedule 'A'.</p> <p>Terms:</p> <p>The Town must be notified of your intent: contact <a href="mailto:cao@nanton.ca">cao@nanton.ca</a> or <a href="mailto:develop@nanton.ca">develop@nanton.ca</a></p> <p>All equipment should be stored inside once your establishment closes at the end of each day (this is key to your use not being exclusive).</p> <p>Provide the Town of Nanton with evidence that you have added it as an additional insured to your general liability insurance policy for 2021 (if you are on public property or boulevards, etc.).</p> <p>You have a business licence in good standing with the Town.</p> <p>All sanitization requirements set out by the Province of Alberta must be followed.</p> <p>Outdoor, wind resistance garbage and recycling must be provided by the establishment without encumbrance to pedestrians or road users.</p> <p>This program is available to food and beverage operators with storefront locations – it is not for mobile vendors.</p> <p>The Town may be able to assist with delineation and cones if equipment can be spared , but this cannot be guaranteed.</p>