

THE CORPORATION OF THE DISTRICT OF PEACHLAND

BYLAW NUMBER 1960, 2010

A bylaw to regulate the granting of encroachment permits on highways within the Corporation of the District of Peachland

WHEREAS Section 35 of the Community Charter authorizes Council to regulate the granting of encroachment permits on highways within the Corporation of the District of Peachland;

NOW THEREFORE the Municipal Council of the Corporation of the District of Peachland, in Open Meeting assembled, enacts as follows:

1. This bylaw may be cited as "Highway Encroachment Bylaw No. 1960, 2010".

INTERPRETATION

2. In this bylaw:

"Applicant" means the Owner who makes application for an Encroachment Permit;

"Council" means the Council of the Corporation of the District of Peachland;

"Director" means the person holding the office of Director of Operations for the District and includes their delegate;

"District" means the Corporation of the District of Peachland;

"Encroachment" means a building, structure or physical object occupying a part of the surface, subsurface or airspace above Highway including without limitation, natural materials such as plants, soil and rocks;

"Encroachment Agreement" means an agreement required under this Bylaw;

"Encroachment Permit" means a permit for an Encroachment issued under the authority of this Bylaw;

"Highway" includes every highway the soil and freehold of which are deemed to belong to the District under Section 35(1) (a) of the *Community Charter*;

"Long-Term Encroachment" means an Encroachment that will be in place one year or longer;

"Owner" means any person who is the registered owner, or owners under agreement, of real property, and includes any person in actual or apparent possession of real property under a lease, license or agreement with other owner;

"Permit Holder" means the Owner who has been issued an Encroachment Permit; and,

"Temporary Encroachment" means an Encroachment that will be in place for less than one year.

APPLICATION REQUIREMENTS AND APPROVAL PROCESS

3. An Owner who wishes to construct or place an Encroachment on a highway shall make application on the form provided by the District.

4. Every application shall include:
 - (1) a description of the location, extent, nature and purpose of the Encroachment
 - (2) such other information, as required by the Director, to understand the nature of the proposed Encroachment and its impact;
 - (3) a plan, sketch or drawing prepared by a Professional engineer licensed to practice in the Province of BC, satisfactory to the Director, showing the details of the encroachment;
 - (4) the fee required under Schedule "A"
5. Prior to an Encroachment permit being issued for a Long-Term Encroachment, the Applicant must enter into an Encroachment Agreement in the form provided by the District.

GENERAL REQUIREMENTS

6. Where the Encroachment would restrict public access over or across the encroachment area, the Director shall mail or otherwise deliver notification of the proposed Encroachment to the owners of properties directly affected by the Encroachment whose properties are within 30 metres of the proposed encroachment.
7. No person shall excavate to construct, place or maintain any Encroachment in, on, or under a highway unless the person holds a valid Encroachment Permit for this Encroachment.
8. Where an existing Encroachment is deemed to affect the District's ability to carry out this work within the highway or where the safety of the public may be affected by the Encroachment, the Permit Holder may be required to modify the Encroachment and such modification shall be at the Permit Holder's expense.
9. Where a Permit Holder requests an amendment to an Encroachment Permit or an Encroachment Agreement, the amendment must be in compliance with this bylaw and approved by the District, and any modification to the Encroachment shall be at the Permit Holder's expense.

CONDITIONS

10. All Encroachment Permits are subject to the conditions set out in this Bylaw, and all holders of an Encroachment Permit shall conform strictly to those conditions and to any special conditions set out in the applicable Encroachment Permit.
11. An appeal of the revocation or termination of the applicable encroachment Permit or Encroachment Agreement may be made to Council and the decision of Council shall be final.
12. A Permit Holder shall keep an Encroachment in good repair. In the event that the Permit Holder fails or neglects to keep an Encroachment in good repair, the Director may provide notice to Permit Holder of any deficiency in the Encroachment and request that such deficiency be rectified. Upon thirty (30) days notice to the Permit Holder the Encroachment Permit may be revoked, the Encroachment Agreement terminated, and the Encroachment removed. Any costs incurred by the District to remove the Encroachment shall be recovered from the Permit Holder.

SEVERABILITY

13. If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed portion.

14. Every person who, contrary to the provisions of this bylaw, suffers or permits any act or thing to be done or who neglects to do or refrains from doing anything required to be done by this bylaw commits an offence.
15. Every person who commits an offence under this bylaw shall upon summary conviction be liable to the maximum penalties that may be imposed pursuant to the *Offence Act* for each and every offense, and each day that an offence continues shall constitute a separate offence against this bylaw.

READ A FIRST TIME, this 23rd day of November, 2010.

READ A SECOND TIME, this 23rd day of November, 2010.

READ A THIRD TIME, this 23rd day of November, 2010.

FINALLY RECONSIDERED AND ADOPTED, this 18th day of January , 2011.

 
Mayor Corporate Officer

Dated at Peachland, B.C.

This 18th day of January, 2011



SCHEDULE "A"

SCHEDULE OF FEES

1. Encroachment Permit Application Fees
 - (1) Non-refundable Application Fee \$400.00
 - (2) Council Referral Fee \$ 50.00
2. Permit Fee for Temporary Encroachment \$100.00
3. Annual Fee for Long-Term Encroachment \$100.00
 Plus an annual per square metre rental rate
 Based on the zoning of the lands adjacent
 To the encroachment as indicated below:

<u>Zoning Classification</u>	<u>Annual Rental Rate/Square Metre</u>
Agricultural	\$ 0.50
Rural	\$ 2.00
Low Density Residential	\$11.00
Medium Density Residential	\$16.00
High Density Residential	\$60.00
Commercial	\$16.00
Industrial	\$ 5.25
Institutional	\$ 5.25