

The Corporation of the District of Peachland

Highway Encroachment Policy

Effective Date: November 23, 2010	Authorized By: Council – Regular Meeting	Replaces: New Policy
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Purpose:

To manage private encroachments on District owned properties and road allowances.

Application/Procedure:

In matters relating to private encroachments being proposed on a District property or within a District road allowance or District Right of Way, the following guidelines shall be followed:

- a) An Owner proposing to place an encroachment within a District road allowance or District owned right of way shall complete an encroachment application, in the form attached to this policy as Schedule “A”, and submit the application to the Director of Operations (“the Director”).
- b) The Director will review the application and upon being satisfied that sufficient information has been provided to determine the location and extent of the encroachment, the application will be referred to the appropriate Departments for review and comment.
- c) In considering whether to recommend approval of an encroachment, the Director must consider the term of the encroachment, the probability of the encroachment having to be removed or modified as a result of the District or a utility company wishing to place works in the location of the encroachment, and those future costs the Permit Holder would incur to modify or remove the encroachment.
- d) Where the Director is not prepared to recommend approval of an Encroachment Permit and the applicant wishes further consideration, the Director will submit a report for the Chief Administrative Officer’s review. Where the Chief Administrative Officer does not support the permit being issued, the applicant may apply for Council’s consideration.
- e) Encroachment Permits for Temporary Encroachments shall be issued substantially in the form attached as Schedule “B” to this policy, subject to payment of the applicable fee.
- f) Encroachment Permits for Long-Term Encroachments shall be issued substantially in the form attached as Schedule “C” to this policy, subject to payment of the applicable fee.
- g) Where an Encroachment Permit for a Long-Term Encroachment has been issued, a comment to this effect shall be noted on the District’s property record for the affecting property; and further, the encroachment area is to be shown on the District’s base maps.

Policy Directive - Highway Encroachments

Schedule "A"

**DISTRICT OF PEACHLAND
HIGHWAY/PROPERTY ENCROACHMENT APPLICATION**

Applicant's Name: _____

Applicant's Address: _____

Civic Address of Affecting Property: _____

Applicant's Home Phone: _____ Applicant's Work Phone: _____

Type of Encroachment

Temporary Encroachment (less than one year)

From: _____ to _____

Long-Term Encroachment (one year or longer)

From: _____ to _____

Document Submission:

Description of location, extent, nature and purpose of Encroachment

Plan, sketch or drawing showing details of Encroachment

Statement of the manner in which the Encroachment will be constructed and maintained that will ensure the preservation and continued safe use of the Highway for municipal and public access purposes

Application Fee \$400.00

Receipt Number: _____ Date Paid: _____

OFFICE USE ONLY

Referrals:

Engineering & Operations Supported: _____ YES _____ NO

Municipal Development Supported: _____ YES _____ NO

Parks & Recreation Supported: _____ YES _____ NO

Administration Supported: _____ YES _____ NO

Fire Department Supported: _____ YES _____ NO

Property Owner Advisory Notice: Required: _____ YES _____ NO

Recommend Approval: _____ Recommend Denial: _____
(Signature of Director of Operations)

Request for referral to Council

Referral Fee \$50.00 Receipt Number: _____ Date Paid: _____

Considered by Council on: _____ Approved / Denied

Policy Directive - Highway Encroachments

Schedule "B"

District of Peachland

Encroachment Permit for Temporary Encroachment – No. _____

Permit Issued To:

Address of Encroachment:

Term of Permit:

General Intent of Permit:

Conditions of Permit:

.

Permit Fee: \$_____

Issued this _____, day of _____, 200__.

Director of Operations

Policy Directive – Highway Encroachments

Schedule “C”

District of Peachland

Encroachment Permit for Long-Term Encroachment No. _____

Permit Issued To:

Address of Encroachment:

Term of Permit:

General Intent of Permit

Conditions of Permit:

Encroachment Agreement Attached

Annual Fee:

\$_____.

(\$100.00 plus an annual per metre rental rate of \$_____.)

(to be paid annually in advance of the anniversary of the date of issuance)

Issued this _____, day of _____, 200__.

Director of Operations

ENCROACHMENT AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 200__.

BETWEEN:

DISTRICT OF PEACHLAND,
a municipality under the laws of British Columbia
having its office at 5806 Beach Avenue,
Peachland, British Columbia, V0H 1X7
(hereinafter called the "District")

OF THE FIRST PART

AND:

(hereinafter called the "Permit Holder")

OF THE SECOND PART

WHEREAS:

A. The Permit Holder is the registered owner of the lands in the District of Peachland in the Province of British Columbia, more particularly known and described as:

Parcel Identifier: _____

Legal Description: _____

(hereinafter called the "Property")

B. The Permit Holder has requested that the District grant permission to construct, use or continue the use or existence of the following encroachment(s):

(the "Encroachment(s)")

upon (a highway known as _____ (the "Highway") which request the District has agreed to grant, subject to the provisions of the Highway Encroachment Bylaw, in force from time to time, and subject to the terms and conditions herein set forth.

NOW THIS AGREEMENT WITNESSETH THAT in consideration of the premises and the covenants contained herein by the Permit Holder to be performed and observed, the parties agree as follows:

1. The District (so far as it legally can, but not otherwise) hereby grants to the Permit Holder a permit to construct and maintain the Encroachments upon the Highway.
2. The Permit Holder covenants and agrees with the District that it will pay to the District upon the execution of this agreement the sum of _____ Dollars (\$_____) and a like sum on each succeeding anniversary date thereafter as prescribed by the Highway Encroachment Bylaw, in force from time to time.
3. The Permit Holder will at all times, and at its own expense, build, keep and maintain the Encroachment(s) in good and sufficient repair to the satisfaction of the District.
4. The Permit Holder agrees that if the construction, maintenance, use or removal of the Encroachment(s) makes an alteration or change necessary to any meter, water service, sewer, or other public works or utility in the vicinity of the Encroachment, the Permit Holder will forthwith reimburse the District for the cost of doing so.
5. If the Permit Holder fails to keep the Encroachment(s) in good and sufficient repair to the satisfaction of the District, or fails to remove them when required by this agreement, the District shall be entitled to so such work and the Permit Holder shall pay the costs to the District forthwith.
6. The District's servants or agents shall have the right at all times to enter the Property or the Encroachment(s) for the purpose of constructing, maintaining, inspecting or removing any public works or utility running underneath the Highway or in the vicinity of the Encroachment(s).
7. The Permit granted herein may be revoked immediately by notice in writing to the Permit Holder, at any time by the District if, in the opinion of the Director of Operations the area occupied by the Encroachment(s) is required for any municipal purpose or the Permit Holder defaults in the performance of its obligations under this agreement.
8. If the Permit is revoked then the Permit Holder will, at their own expense and within such period as may be specified by the District, remove the Encroachment(s) and fill up any excavation made, constructed, or maintained, with respect to them, and put the Highway in a condition to the satisfaction of the District.
9. The covenants herein shall not in any way restrict the right of the District at any

time to alter the Highway (whether by widening it or by raising or lowering the elevations) and notwithstanding that the effect of such alternation in width and or elevation may be to render the Encroachment(s) useless for the purposes of the Permit Holder, the Permit Holder covenants that it releases and forever discharges the District from all manner or claims of any nature whatsoever relating to the Encroachment(s).

- 10.** The Permit Holder hereby charges its interest in the Property in favour of the District for the payment of all sums which may at any time hereafter be payable by the District in respect of any claims, loss, damage or expense arising from the construction, maintenance, or existence of the Encroachment(s) or from the Permit hereby granted, and to answer any indemnity or payment provided in the District's Highway Encroachment Bylaw or under the terms of this agreement, the amount owing with interest at twelve percent (12%) per annum may be recovered in any court of competent jurisdiction, or the same may be recovered in like manner as overdue taxes against the Property.
- 11.** The Permit Holder assumes all risk of personal injury and death and property damage arising out of, in any way connected with or what would not have occurred "but for" the existence of the Encroachments whether or not the same is caused by the negligence of the District, a utility company, or its or their contracts, sub-contractors workmen or licensees.
- 12.** This Agreement shall ensure to the benefit of the Permit Holder, and further, the Permit Holder covenants that before agreeing to transfer, sell or otherwise convey its interest in the Property to a third party, that it shall provide such party express notice as to the terms of this agreement and shall ensure that such party signs an agreement with the District agreeing to be bound thereto as a condition of such transfer or conveyance.
- 13.** Whenever the singular or masculine are used throughout this agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic, where the context or the parties hereto so require.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

THE SEAL OF THE)
DISTRICT OF PEACHLAND was)
hereunto affixed in the presence of:)
)
)
_____)
MAYOR)
)
)
_____)
CORPORATE OFFICER)

SIGNED, SEALED AND DELIVERED by
the Permit Holder in the presence of:

_____) _____
Name)
)
)
_____) _____
Address)
)
)
_____) _____
Occupation)
(As to both signatures)