

# Village of Queen Charlotte

## COUNCIL POLICY

August 16, 2010

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<b>Name of Policy:</b>	<b>Encroachments Policy (for Public Lands and Right of Ways)</b>	
<b>Reference No:</b>	<b>16.0</b>	
<b>Date Adopted:</b>	<b>August 16, 2010</b>	<b>R2010/40/13</b>

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### **Purpose:**

Highways, parks and other municipal lands are owned or held by the Village for the use and enjoyment of the public. In addition, to their use as parks, sidewalks, and roadways, these lands are important corridors for existing and future public services (like water, sewer, drainage, telephone, and hydro) to be placed on, over or in the property.

An encroachment is a structure or use that unlawfully trespasses on land. The purpose of this policy is to provide a framework for Council to consider existing encroachments on municipal property and requests for future encroachments.

### **Policy:**

Requests for an encroachment onto a highway, park or other municipal lands will be considered by council provided that they do not affect the safety or use of the highway, park or lands and provided that they do not affect current or future development or access for maintenance of municipal infrastructure, hydro, telephone or other public services.

Approved encroachments must be constructed, maintained or brought up to a standard that meets the BC Building Code. In addition, encroachments must be consistent with the land uses established by the Official Community Plan and other bylaws of the municipality.

Completed Encroachment Agreements substantially in the form of Schedule 'A' to this Policy must be approved by Council. The holder of an encroachment agreement must also hold liability insurance that names the Village as an additional insured and the amount of liability insurance will depend on the nature of the liability.

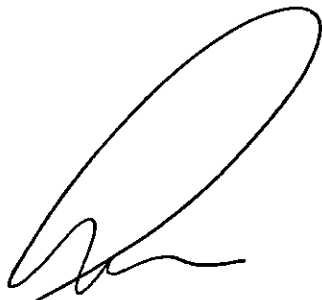
Encroachments that exist prior to the adoption of this Policy shall be reviewed and considered on a case by case basis when they come to the attention of the Village.

The maximum term for an Encroachment Agreement is five (5) years

### **Procedure:**

1. An Application for an Encroachment Agreement is required prior to encroaching on public property or a municipal right of way, or to maintain an existing encroachment;

2. An application for an encroachment will be reviewed by the Superintendent of Public Works the Director of Finance and the Chief Administrative Officer, who shall provide written comment on the application and a recommendation prior to presenting it to Council;
3. The Superintendent of Public Works and/or the Chief Administrative Officer shall inspect the proposed encroachment with a view to ensuring that it meets the requirements of the Policy;
4. The following fees apply to an Encroachment Application and Permit:
  - a. Application Fee (non-refundable): \$100.00 for initial review and inspection of property;
  - b. Business Use (excluding utilities): Greater of \$200.00 or \$2.50/sq. ft. of area per year for the term of the agreement or permit
  - c. Non-business use: \$50.00 per year for the term of the Agreement or permit
  - d. One time permit less than 12 mos.: \$50.00
  - e. Renewal of an Agreement or Permit: \$50.00 plus the applicable fee, b., c., or d. above
  - f. Additional costs incurred by the Village to inspect, process or review an Encroachment Application will be assessed at actual costs



Chief Administrative Officer

AUGUST 17, 2010  
Date

**VILLAGE OF QUEEN CHARLOTTE**  
**APPLICATION FOR AN ENCROACHMENT AGREEMENT**

1. **Date:**
2. **New Application or Renewal:**
3. **Name(s) of Applicant(s) (if the applicant is a business, the full corporate name is required and the name of the contact person):**

4. **Phone Number:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

5. **Address:**

6. **Address of Property where Encroachment is Requested:**

7. **Legal description of Property:**

8. **Reason for the Encroachment:**

9. \_\_\_\_\_

**Signature of Applicant**

**Signature of Applicant**

10. **Attachments:**

a. **State of Title Certificate**

b. **Sketch Plan of Encroachment Area**

\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE "A"**

Of Village of Queen Charlotte Encroachment Policy 16.0  
ENCROACHMENT AGREEMENT

THIS AGREEMENT dated the            day of            2010

**BETWEEN:**            **The Village of Queen Charlotte**  
                                 903 A Oceanview Drive  
                                 Queen Charlotte, BC, V0T 1S0  
(hereinafter called the "Village")  
OF THE FIRST PART

**AND:**

(hereinafter called the "Licensee")  
OF THE SECOND PART

**WHEREAS:**

A. The Licensee is the registered owner of the lands in the Village of Queen Charlotte in the Province of British Columbia, more particularly know as the described as:

- Lot:
- Block:
- District Lot:
- Plan:
- Parcel Identifier:

(hereinafter called the "Property")

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

Measuring        square meters (or        square        feet) encroaching on to a highway or other public land shown on a sketch plan by B.C.L.S., dated        a print of which is attached hereto,

(the "Encroachment(s)")

which request the Village has agreed to grant, subject to the provisions of Queen Charlotte Encroachment Policy 16.0 (the "Encroachment Policy"), and subject to the terms of conditions herein set forth.

**NOW THIS AGREEMENT WITNESSES THAT** in consideration of the premises and covenants contained herein by the Licensee to be performed and observed, the parties agree as follows: (Inapplicable parts to be deleted and initialed).

1. The Village (so far as it legally can, but not otherwise), hereby grants to the Licensee a license to construct and maintain the Encroachment(s) upon the Highway or other public land.
2. The Licensee covenants and agrees with the Village that it will pay to the Village upon the execution of this Agreement the sum of \_\_\_\_\_
3. The Licensee will, at its own expense, construct or improve, the Encroachment in accordance with the BC Building Code to the satisfaction of the Superintendent of Public Works (hereinafter called the "Superintendent").
4. The Licensee will at times, and at its own expense, keep and maintain the Encroachment(s) in good and sufficient repair to the satisfaction of the Superintendent.
5. The Licensee agrees that if the construction, maintenance, use or removal of the Encroachment(s) makes an alteration or change necessary to any meter, water services, sewer, or other public works or utility in the vicinity of the Property, the Licensee will forthwith reimburse the Village for the cost of doing so.
6. If the Licensee fails to keep the Encroachment(s) in good and sufficient repair to the satisfaction of the Superintendent or fails to remove them when required by this Agreement, the Village shall be entitled to do such work and the Licensee shall pay the costs the Municipality forthwith.
7. The Village 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 on, over or underneath the Highway or other public place or in the vicinity of the Encroachment(s).
8. The license granted herein may be revoked by notice in writing to the Licensee, or its successor in title, at any time by Resolution of the Village Council if, in the opinion of the Superintendent, the area occupied by the Encroachment(s) is required for any municipal purpose or the Licensee defaults in the performance of its obligations under this Agreement.
9. If this license is removed then the Licensee will, at its own expense and within such period as may be specified in the Council Resolution, remove the Encroachment(s) and fill up any excavation made, constructed, or maintained, with respect to them and put the Highway or other public place in a condition satisfactory to the Superintendent.

10. The covenants herein shall not in any way restrict the right of the Village at any time to alter the Highway or other public place (whether by widening it or by raising or lowering the elevation) and notwithstanding the effect of such alteration in width and/or elevation may be to render the Encroachment(s) useless for the purpose of the Licensee, the Licensee covenants that it releases and forever discharges the Village from all manner of claims of any nature whatsoever relating to the Encroachment(s).
11. The Licensee hereby charges its interest in the Property in favour of the Village for payment of all sums which may at any time hereafter be payable by the Village in respect of any claims, loss, damage or expense arising from the construction, maintenance, or indemnity or payment provided in the Village's Encroachment Policy or under this Agreement. In the default of payment of any amount due under this Agreement, the amount owing, with interest at five percent (5%) 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.
12. The Licensee and its successors in the title assume all risk of personal injury and death and property damage arising out of, in any way connected with or that would not have occurred "but for" the existence of the Encroachment(s) whether or not the same is caused by the negligence of the Village, any utility company, or its or their contractors, sub contactors, workmen or Licensees.
13. The Licensee covenants and agrees with the Village that the Licensee shall maintain at its sole expense comprehensive general liability insurance providing coverage for acts or omissions by the Licensee, its employees and agents in the amount of not less than \$2,000,000.00 per occurrence, all inclusive, and the insurance policy shall:
  - 13.1 name the Village as an additional insured;
  - 13.2 be issued by an insurance company entitled under provincial law to carry on business in British Columbia
  - 13.3 state that policy:
    - 13.3.1 applies to each insured in the same manner and to the same extent as if a separate policy of insurance had been issued to each insured; and
    - 13.3.2 cannot be cancelled, lapsed or materially changed without thirty (30) days written notice to the Village.
    - 13.3.3 be maintained for a period ending twelve months after this agreement is terminated.
14. The Licensee shall provide the Village with a copy of the required insurance policy that shall thereafter provide copies of any renewals and amendments to the Policy.
15. This Agreement is made pursuant to the Village Encroachment Policy and shall be at all times subject thereto as well as to all other Bylaws of the Village; the Licensee agrees to abide by all Bylaws and if the Licensee fails to comply with such Bylaws or this Agreement the all rights of

the Licensee hereunder shall terminate except that the Village shall be entitled to enforce any security or indemnity herein provided.

16. The Licensee's covenants set forth herein shall be covenants the burden of which shall run with the Property and bind the Property and every part into which the Property may be subdivided.
17. This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the respective parties hereto and to ensure the same the Licensee covenants that before agreeing to transfer, sell or otherwise convey its interest in the Property to a third party, it shall provide such part of express notice as to the terms of this Agreement and shall ensure that such party signs an Agreement with the Village agreeing to be bound hereto as a condition of such transfer of conveyance.
18. 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 policy, 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 VILLAGE OF QUEEN CHARLOTTE

Was hereunto affixed in the presence of

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CHIEF ADMINSTRARTIVE OFFICER

SIGNED, SEALED AND DELIVERED by

the Licensee in the presence of

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Witness as both signatures