

Bylaw No. 3109

A bylaw to regulate the granting of encroachment permits on highways within the City of Chilliwack pursuant to Section 35 of the *Community Charter*

The Council of the City of Chilliwack in open meeting assembled, enacts as follows:

1. This bylaw may be cited as “**Highway Encroachment Bylaw 2005, No. 3109**”.

INTERPRETATION

2. In this bylaw:

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

“*Awning Encroachment*” means a sidewalk covering fastened to a building face and consists of a manufactured metal frame covered over with cotton, wood acrylic or vinyl fabrics; (AB#3773)

“Council” means the Council of the City of Chilliwack;

“City” means the City of Chilliwack;

“*Encroachment*” means a building, structure or physical object occupying a part of the surface, subsurface or airspace above a Highway including without limitation, natural materials such as plants, soil and rocks; excluding tables and chairs used for dining purposes placed within designated sidewalk locations approved by the City’s Engineering Department; (AB#4012)

“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 City under Section 35(1)(a) of the *Community Charter*;

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

“Manager” means the person holding the office of Property Manager for the City and includes their delegate;

“Owner” means any person who is the registered owner, or owner under agreement, of real property, and includes any person in actual or apparent possession of real property under a lease, license or agreement with another 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 City.
- 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 Manager, 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 Manager, 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 City.

GENERAL REQUIREMENTS

- 6.** *Each applicant and permit holder is required to pay those fees as set out in Schedule “A” of this Bylaw, except when an Encroachment Permit is issued for an Awning Encroachment, thereby exempting the annual fee and annual rental fee. (AB#3773)*
- 7.** Where the Encroachment would restrict public access over or across the encroachment area, the Manager 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.
- 8.** No person shall excavate for, construct, place or maintain any Encroachment in, on, or under a Highway unless the person holds a valid Encroachment Permit for that Encroachment.
- 9.** Where an existing Encroachment is deemed to affect the City's ability to carry out its 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.
- 10.** 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 City, and any modification to the Encroachment shall be at the Permit Holder's expense.

CONDITIONS

11. 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.
12. A Permit Holder shall, before commencing the construction repair or removal of any Encroachment, obtain all permits and approvals required under any other City Bylaw.
13. A Permit Holder shall, at all times, comply with the terms of the Encroachment Permit or Encroachment Agreement and any breach or termination thereof may result in a revocation or termination of the applicable Encroachment Permit or Encroachment Agreement.
14. 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.
15. 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 Manager may provide notice to the 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 City to remove the Encroachment shall be recovered from the Permit Holder.

SEVERABILITY

16. 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.

OFFENCE AND PENALTY

17. 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.
18. 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 offence, and each day that an offence continues shall constitute a separate offence against this bylaw.

“Highway Encroachment Bylaw 2005, No. 3109”

Received first reading on the 7th day of February, 2005.

Received second reading on the 7th day of February, 2005.

Received third reading on the 7th day of February, 2005.

Finally passed and adopted on the 21st day of February, 2005.

Amendment Bylaw No. 3773 adopted on the 3rd day of May, 2011.

Amendment Bylaw No. 4012 adopted on the 15th day of April, 2014.

“Clint Hames”

Mayor

“Robert L. Carnegie”

Clerk

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

(Note: Awning Encroachment exempted from Annual Fee and Rental Fee) (AB#3773)