

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

ENCROACHMENT BYLAW NO. 3050,

AMENDMENT BYLAW NO. 3255, 1986

A Bylaw to amend Encroachment Bylaw No. 3050

(Commutation of Charges)

WHEREAS it is deemed appropriate to amend the "Encroachment Bylaw No. 3050";

NOW THEREFORE the Council of The Corporation of the District of West Vancouver, in open meeting assembled, enacts as follows:

1. "Encroachment Bylaw No. 3050" is amended:

(1) By adding as Section 4, Sub-section (4) the following:

"4(4) Sub-section (2)(a) shall not apply where the encroachment consists of an installation in or on a highway necessary in order to provide a crossing for motor vehicular access from the highway to the contiguous real property."

(2) by inserting in Section 4(2) (a) between the words "annual" and "charges" the words "or commuted";

(3) by renumbering subsection (2) of Section 9 as subsection (3);

(4) by adding as subsection (2) of Section 9 the following~:

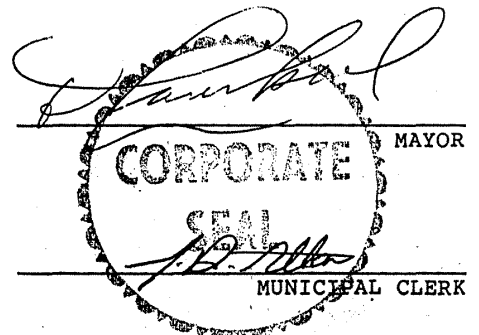
"9(2) The annual charges which might otherwise be payable in accordance with subsection (1) may, on the application of the owner, be commuted to one lump sum prepayment equal to the present value of the annual charges for sixty years, based on the current annual charge, discounted by The Royal Bank of Canada's current prime rate. For the purpose of this subsection the annual charge is ten percent (10%) of the value of the area of encroachment which is equal to the same proportion of the assessed, value of the land for the owner's adjoining parcel that the land area of the encroachment is to the land area of the said adjoining parcel."

2. This Bylaw may be cited for all purposes as "Encroachment Bylaw No. 3050, Amendment Bylaw No. 3255, 1986".

PASSED by the Council on 1986, December 15

RECONSIDERED AND ADOPTED by the Council on 1986

December 18



THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

ENCROACHMENT BYLAW NO. 3050

A Bylaw for regulating encroachments
upon, under or over the highways
within the District of West Vancouver

The Council of The Corporation of the District of West Vancouver, in open meeting assembled, enacts as follows:

1. DEFINITIONS

In this Bylaw, unless the context otherwise requires:

- (a) “Appurtenant” means adjacent to, adjoining or enjoyed with;
- (b) “District” means The Corporation of the District of West Vancouver;
- (c) “Engineer” means the Director of Operations of The District of West Vancouver;
- (d) “Encroachment” means the occupation of a part of the surface, sub-surface of or airspace above a highway by a building, structure or physical object;
- (e) “Footing” means that part of the foundation of a building which projects or extends into a highway;
- (f) “Owner” means any person who is the registered owner or owner under agreement of real property.

2. PERMISSION

- (1) Subject to the “Crossings Bylaw No. 3049” and subject to subsection (2), no person shall excavate for, construct, use or maintain any encroachment upon, under or over a highway unless such person shall have first entered into an agreement with the District in accordance with Section 4.
- (2) If an encroachment consists only of a grassed or garden area, steps, fence, rockery, hedge or access sidewalk or any combination thereof, permission is hereby granted for the use and continuance of the same and an agreement pursuant to subsection (1) will not be necessary if, in the opinion of the Engineer, the encroachment:
 - (a) is of a semi-permanent nature;
 - (b) may be easily removed;
 - (c) is not hazardous to the public;
 - (d) is not necessarily for the exclusive benefit of the owner of the real property to which the encroachment is appurtenant;
 - (e) has, as one of its principal purposes, the beautification or the enhancement of the utility of such real property.

3. APPLICATION FOR PERMISSION

Any owner desiring permission to excavate for, construct, use or maintain any encroachment upon, under or over a highway appurtenant to his real property, or desiring permission to continue the existence, maintenance or use of any encroachment on a highway appurtenant to his real property heretofore existing, maintained or used without permission, shall submit to the Engineer a written application therefor accompanied by such number of copies of a plan as the Engineer may require showing the detail of such encroachment, to the satisfaction of the Engineer; and upon the Engineer being satisfied as to the safety and advisability of such encroachment, he may grant such permission.

4. AGREEMENTS

- (1) Before any owner to whom permission has been granted by the Engineer shall proceed with the excavation for or construction of any encroachment, or shall continue the existence, use or maintenance of any encroachment, he shall enter into an agreement with the District and shall thereupon pay to the District such fees for inspection, for preparation and registration of the agreement and such first annual charge, as shall be determined by the Council of the District by resolution from time to time.
- (2) The agreement referred to in sub-section (1) shall include provision for:
 - (a) annual charges and maintenance costs;
 - (b) the right of the Engineer or his authorized representative to enter upon the premises of the owner for the purpose of inspecting, maintaining or removing the encroachment;
 - (c) payment by the owner of all costs of and incidental to the removal of the encroachment;
 - (d) the termination of all rights of the owner.
- (3) The agreement provided for in subsection (1) shall be registered as a charge against the interest of the owner in the real property to which the encroachment is appurtenant; provided, however, that if the owner does not wish to charge his interest in the real property as aforesaid, negotiable or other security in form and amount satisfactory to the Municipal Manager shall be furnished by such owner. Such bond shall provide reasonable security for the indemnity described in Section 12, the payment of the annual charge, and all other obligations of such owner imposed under this Bylaw.

5. PERMITS

Where an owner has entered into an agreement with the District in accordance with Section 4 he shall, before commencing the construction, repair or removal of any encroachment, obtain all permits necessary therefor under any other bylaw of the District.

6. INSPECTION PRIVILEGE

The right of an owner to excavate for or to construct, maintain or use any encroachment under this bylaw shall be subject at all times to the right of the Engineer, or his authorized representative, to enter into and upon the premises of the owner for the purpose of

- (a) inspecting, maintaining or removing the encroachment in accordance with this Bylaw and the terms of any agreement entered into pursuant to this Bylaw;
- (b) constructing, inspecting, maintaining, or removing any public works or utilities that have been or may in the future be installed in the highway in proximity to any encroachment.

7. EXCAVATION AND CONSTRUCTION IN ACCORDANCE WITH AGREEMENT

Where an owner has entered into an agreement with the District in accordance with Section 4 or has provided the District with the security required by Section 4, the owner shall advise the Engineer of his readiness to commence the work, and shall obtain the Engineer's permission in writing before any work is commenced; and the owner shall ensure that all work is performed in accordance with the agreement entered into and this Bylaw, and in such manner as to render the highway safe for the use of the public; provided, however, that if such work is not fully completed within twelve months from the date of the agreement, such agreement, unless extended by the Engineer, shall thereafter be null and void, and all rights and privileges of an owner thereunder shall be absolutely terminated, and all amounts paid by the owner with respect thereto shall be forfeited to and become the property of the District, and such owner shall have no recourse whatsoever against the District by reason of the termination of the agreement or the permission granted thereunder.

8. REMOVAL

In the event of:

- (a) the termination of an agreement to excavate for, construct, maintain or use any encroachment; or
- (b) an encroachment being excavated for or constructed, maintained, used or continued by any person without his having entered into an agreement with the District pursuant to Section 4; or
- (c) any person otherwise failing to comply with any of the provisions of this Bylaw; the Engineer may serve notice on the owner of the real property to which such encroachment is appurtenant requiring such owner within six (6) months thereafter to remove any structure or works and fill up any excavation made, and to replace and put

the highway or other area in, under, or over such encroachment in the same condition as the adjoining highway or other area to the satisfaction of the Engineer.

9. ANNUAL CHARGE

- (1) An annual charge shall be paid in advance to the District by the owner of the real property to which an encroachment is appurtenant, in an amount to be determined by resolution of the Council of the District from time to time. Such annual charge, when due, shall be collected by the District in the same manner and with the like remedies as ordinary taxes on land and improvements under the Municipal Act of British Columbia.
- (2) In the case of the excavation for or the construction, use, or maintenance of an encroachment without permission as required by this Bylaw, the owner of the real property to which such encroachment is appurtenant, and the said real property, shall nevertheless be and remain liable for all indemnities, liabilities and charges at the rates for the period during which it is so continued.

10. MAINTENANCE OF ENCROACHMENTS

Every owner shall keep the encroachment appurtenant to his real property in good and sufficient repair to the satisfaction of the Engineer; and in the event of the owner failing or neglecting to keep such encroachment in good and sufficient repair as aforesaid, the Engineer may notify such owner to forthwith execute the necessary repairs.

11. FAILURE TO MAKE REPAIRS

In case an owner fails to keep an encroachment appurtenant to his real property in good and sufficient repair to the satisfaction of the Engineer, or fails to remove any structure or works thereon or therein, or to fill up any excavation pursuant to notice duly given under this Bylaw, the Engineer may make such repairs, including structural changes, or remove such structure or works, or fill up such excavation, as the case may require in the opinion of the Engineer, and the owner shall pay the costs of such work to the District forthwith; and if unpaid shall be collected in the same manner and with the like remedies as ordinary taxes on land and improvements are collectible under the Municipal Act of British Columbia.

12. INDEMNITY

Every owner who excavates for, constructs, maintains, or permits the existence or, or uses any encroachment appurtenant to his real property under the provisions hereof or otherwise, shall at all times be liable for and shall indemnify the District against any and every claim, loss, expense or damage, and any suit or demands which may be occasioned

by or incidental to the construction, existence, use or maintenance of an encroachment, and the amount of any loss or damage occasioned to the District thereby, except as otherwise herein provided, shall be a lien or charge on all real property to which such encroachment is appurtenant.

13. JOINT AND SEVERAL LIABILITY

The liability of owners under this Bylaw, where there is more than one such owner, shall be deemed to be, and shall be, for all purposes joint and several.

14. VIOLATION OF BYLAW

Every person who offends against this Bylaw, or who suffers or permits any act or thing to be done in contravention or in violation of this Bylaw, or who neglects to do or refrains from doing anything required to be done by this Bylaw, or who does any act or thing which violates this Bylaw, shall be deemed to be guilty of an offence against this Bylaw and shall be liable to the penalties hereby imposed.

15. PENALTY

- (1) Every person who commits an offence against this Bylaw is liable to a fine and penalty not exceeding Two Thousand Dollars (\$2,000.00) or six months' imprisonment, or both.
- (2) Where an offence against this Bylaw is of a continuing nature, it shall be lawful for the convicting magistrate, in his discretion, to impose a fine against the offender, not exceeding Fifty Dollars (\$50.00) for each day such offence is continued by him.

16. PRE-EXISTING ENCROACHMENTS

Nothing in this Bylaw shall be construed so as to condone the existence or the continuation of an encroachment which was constructed prior to the passage of this Bylaw without the express knowledge and permission of the District.

17. EXECUTION OF DOCUMENTS

The Mayor and Municipal Clerk of the District may execute:

- (a) an encroachment agreement authorized under Section 4;
- (b) a release of any agreement pertaining to an encroachment when such encroachment has been removed to the satisfaction of the Engineer;
- (c) the release of an existing encroachment agreement when such agreements to be replaced by a new agreement.

18. This Bylaw shall not be applicable to any encroachment which is specifically regulated by some other Bylaw of the District.

19. "West Vancouver Highway Regulation Bylaw No. 735, 1937" is hereby repealed but not so as to revive any provisions not contained herein.

20. This Bylaw may be cited for all purposes as "Encroachment Bylaw No. 3050".

PASSED by the Council on the 1st day of November, 1982.

RECONSIDERED AND ADOPTED by the Council on the 8th day of November, 1982.

MAYOR

MUNICIPAL CLERK