

THE CORPORATION OF THE VILLAGE OF MONTROSE

BYLAW # 533

A BYLAW TO REGULATE ENCROACHMENTS.

WHEREAS section 582 of the *MUNICIPAL ACT* (RS Chapter 323) authorizes the Council of the Village of Montrose to regulate encumbrances and obstructions of highways,

NOW THEREFORE the Council of the Village of Montrose, in open meeting assembled, ENACTS AS FOLLOWS:

SHORT TITLE

1. (1) This Bylaw may be cited as the "**ENCROACHMENT BYLAW**"

PERMANENT ENCROACHMENTS

2. (1) Subject to the limitations established in this Bylaw, the following encroachments shall be permitted in the Village where the building setback pursuant to the Zoning Bylaw is 0:
 - a) underground encroachments, including
 - i) footings
 - ii) access ways
 - b) surface encroachments, including
 - i) stairs or steps
 - ii) porch roof and awning support posts
 - c) aerial encroachments, including
 - i) signs
 - ii) balconies
 - iii) bay windows
 - iv) awnings
 - v) porch roofs
3. (1) An encroachment shall be limited to the extent that the encroachment shall not, in the opinion of Council, unduly restrict the use of the public lands.
 - (2) All encroachments shall be defined and registered on the title of the land to which the encroachment is attached by means of a restrictive covenant.
 - (3) A restrictive covenant authorizing an encroachment shall be in the form prescribed in Schedule "A" attached to and forming part of this Bylaw.

TEMPORARY ENCROACHMENTS

4. (1) Council may authorize a temporary encroachment of a sidewalk or other part of a highway to permit and facilitate construction and/or renovation work on adjacent property.
 - (2) Permission for a temporary encroachment shall be in the form prescribed in Schedule "B" attached to and forming part of this Bylaw.

FEES & COSTS

- 5. (1) The fee payable to the Village for a permanent encroachment shall be a one-time nominal fee of ten dollars (\$10.00).
- (2) The fee payable to the Village for a temporary encroachment shall be a one-time nominal fee of twenty-five dollars (\$25.00).
- (3) An applicant for an encroachment shall be responsible for all legal, survey, registration and associated cost of a restrictive covenant.

UNLAWFUL ENCROACHMENT

- 6. (1) An encroachment not secured by a restrictive covenant on or after the adoption of this Bylaw shall be deemed to be an unlawful encroachment and shall be subject to an order or removal pursuant to the provisions of the *MUNICIPAL ACT*.
- (2) An encroachment shall be maintained at all times in full compliance with all building regulations applicable in the Province of British Columbia and, where a building inspector of the Village certifies in a report to Council that an encroachment does not conform to the applicable building regulations, the Council may order the encroachment removed pursuant to the provisions of the *MUNICIPAL ACT*.

ENACTMENT

- 7. (1) If any section, subsection, sentence, clause or phrase of this bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, the invalid portion shall be severed and the part that is invalid shall not affect the validity of the remainder.
- (2) Bylaw 330 "Boulevard Bylaw" is hereby repealed.
- (3) This bylaw shall come into full force and effect on the final adoption thereof.

READ A FIRST TIME	this 6th day of October, 1998
READ A SECOND TIME	this 20 th day of October, 1998
READ A THIRD TIME	this 3 rd day of November, 1998
RECONSIDERED AND FINALLY ADOPTED	this 17 th day November, 1998

Mayor

Village Clerk

Certified a true copy of Bylaw # 533 as adopted.

André Carrel, Village Clerk

THE CORPORATION OF THE VILLAGE OF MONTROSE

BYLAW # 533

SCHEDULE "A"

TERMS OF INSTRUMENT - PART 2

WHEREAS

- A. The Transferor is the registered owner of the Lands and has requested the Transferee's permission to have an encroachment, appurtenant to the Lands, on the (*name of street*) street allowance (hereinafter referred to as 'the street allowance') of the Transferee;
- B. The Transferee has agreed to permit the encroachment, subject to the provisions of this agreement and subject to the provisions of the Transferee's ENCROACHMENT BYLAW and all amendments thereto;
- C. Section 219 of the *LAND TITLE ACT* provides for a covenant to be registered against title to land in favor of a municipality that the land or any specified portion is not to be built on, or is to be, or is not to be, used in a particular manner.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of one dollar now paid by the Transferor to the Transferee and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties) the parties agree as follows:

- 1. The Transferor covenants and agrees with the Transferee pursuant to Section 219 of the *LAND TITLE ACT*, it being the intention and agreement of the Transferor that the provisions hereof will be a charge against and run with the Lands, that: the Lands and buildings and structures situated thereon will not be further built on or added to, as the case may be, without the permission of the Transferee, such permission not to be unreasonably or arbitrarily withheld.
- 2. The Transferor is permitted to construct and maintain an encroachment comprising a (*foundation, stairway, canopy, porch, sign*) encroaching onto the street allowance, which encroachment, including all (*excavation and other*) work now or hereafter performed in connection therewith, are hereinafter collectively called the 'Works'.
- 3. The Transferor hereby grants to the Transferee the full, free and interrupted right, liberty, easement and statutory right-of-way to enter upon the Lands, with or without men, tools and equipment and supplies in order to inspect the Works or to carry out any obligations of the Transferor in this agreement which the Transferor fails to fulfill, observe or perform to the satisfaction of the Transferee.
- 4. The Transferor covenants, at all times, and at its own expense, to keep and maintain the Works in good and sufficient repair to the Transferee's satisfaction.
- 5. Should the Works interfere with any access to the street allowance required by the Transferee from time to time, the Transferor will remove such or all of the Works and on such terms, as may be deemed necessary by the Transferee.
- 6. If the Transferor fails to carry out its obligations under the terms of this agreement, the Transferee may remedy the default but will not be under any obligation to do so, and the Transferor will, immediately following receipt of any written request, pay to the Transferee the amount of any costs incurred by the Transferee in so doing.

7. The Transferor will limit the Works to an area of no more than (*vertical distance from property line*) meters onto the street allowance by (*parallel distance along property line*) meters wide.
8. This agreement is entered into pursuant to, and the owner covenants and agrees at all times to observe and perform, the provisions of the *Encroachment Bylaw*, and this agreement will at all times be subject to the *Encroachment Bylaw* as well as to all other bylaws of the Transferee; and in case the Transferor fails to comply with the provisions of the said bylaws, or any of them or of this agreement, all rights of the Transferor hereunder will thereupon terminate; but the Transferee, nevertheless, will be entitled to proceed with enforcement of any security or indemnity herein provided, or upon any bond or otherwise, in satisfaction of any claim, loss or expense of any kind arising under this agreement, or from permission hereby granted.
9. In the event of the termination of this agreement from any cause whatsoever, the Transferor will, at its own expense, and within a period of six months from the date of such termination, or such shorter period as may be specified by the Transferee's Council, remove the Works and repair any damage to property for which the Transferee has responsibility, and restore the portion of the street allowance which contained this encroachment to the satisfaction of the Transferee.
10. No provision of this agreement and no act or omission or finding of negligence, whether joint or several, as against the Transferee in favor of any third party, will operate to relieve, or be deemed to relieve, the Transferor in any manner whatsoever from any liability to the Transferee under this agreement.
11. This agreement will not in any way operate to restrict the right of the Transferee at any time to alter, whether by widening the roadway or sidewalk, or by raising or lowering the elevation of the street abutting or adjoining the Lands, and notwithstanding that the effect of such alteration in width or elevation, or both, may be to render the Works useless for the purpose of the Transferor, and the Transferor covenants that, in the event of the Transferee making such alteration in the width or elevation, or both, of the street, it will release and forever discharge, and hereby releases and forever discharge, the Transferee from all manner of claims of any nature whatsoever, which may arise by reason of such alteration in width and elevation, or both, or by reason of the discontinuance and removal of the Works, as a result of such alteration.
12. This agreement will inure to the benefit of, and be binding upon, the parties and their successors and assigns, provided however, the Transferor will not be liable for breaches or non-observance or non-performance of covenants in respect of any portion of the Lands after the Transferor has ceased to be the registered owner of such portion of the Lands.

END OF DOCUMENT