

# CITY OF COQUITLAM

## Policy

<b>Name of Policy</b>	
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Encroachments into City Owned and/or Controlled Lands	
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<b>Council Adoption Date:</b> July 29, 2013
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*amendments to the policy may be made by the General Manager Engineering & Public Works and the General Manager Parks Recreation and Culture.
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### **Reason for the Policy**

From time to time, it is necessary or desirable for property owners, occupiers, developers or businesses to encroach into City owned and/or controlled properties. Recognizing that encroachments exist, will continue to be discovered, are needed and that in some cases, it may be acceptable for the City to permit encroachments, the City seeks to adopt a policy for processing encroachment applications. This is necessary to ensure that the City operates fairly and consistently, and that steps are taken to limit the City's exposure to liability. It is also necessary to ensure that encroachments do not adversely affect the City or the public's interest in these lands or the City's ability to maintain effective services to the general public.

### **Policy**

#### **General:**

Encroachments onto or into City owned and/or controlled property such as boulevards, parks, road allowances or laneways, fee simple properties or Statutory Rights of Way are not permitted except where authorized by the City pursuant to this policy, or a formal agreement with the City that pre-dates the establishment of this policy and remains in force.

#### **Boulevard Improvements:**

Please note that this policy does not apply to boulevard improvements which include the following:

- non-permanent landscaping features such as flower beds and low-lying shrubs provided they comply with the City's guidelines on boulevard maintenance;
- gravel and fine stone flower-beds;
- retaining walls made of railway ties or other natural materials that are less than 2 feet in height, provided they are not located over any utilities.

Provided they do not present a safety issue, these types of landscaping and boulevard improvements do not require a permit from or agreement with the City. Please contact the City for confirmation that no permit or agreement is required for your existing or proposed boulevard improvement.

### **Encroachments Not Permitted:**

The following are examples of encroachments into City owned or controlled property that will generally **not** be permitted and/or approved:

- encroachments of any nature whatsoever into parkland of any kind;
- encroachments within an emergency access;
- encroachments over utilities;
- encroachments that create, or have the potential to create, a hazardous situation;
- encroachments that reduce off-street parking for more than 48 hours (except those related to development);
- encroachments that obstruct sightlines below a standard acceptable to the City's Engineering & Public Works Department;
- encroachments impede, obstruct, or damage utilities or result in their unsafe exposure.

Any encroachments of such a nature must be removed immediately and the land on which they were situated must be returned the same condition as it was prior to the unlawful encroachment being made.

### **Encroachments for which a Permit is Required:**

As a general guideline, the following encroachments will require a permit. They may also require that the owner enter into an encroachment agreement with the City concerning same and pay a fee associated with the use of the encroachment area, depending on the nature of the encroachment. This is not an exhaustive list and all applications will be evaluated by staff on a case-by-case basis:

- hard, permanent landscaping features including retaining walls of any height made of rigid materials such as stone or concrete, whether or not placed over utilities;
- fences;
- steps and ramps for commercial properties, unless previously approved through another City process;
- irrigation systems; and
- construction waste bins for single family dwellings.
- buildings or structures that require a building permit including footings, sheds, garages, and garbage enclosures;

- areas used for the parking of vehicles (beyond regular on-street parking);
- canopies, signs, awnings, balconies, eaves, sills, air conditioners and other similar projections;
- encroachments to facilitate the development of properties adjacent to the City owned or controlled properties including occupation of roads or rights of way, excavations, material or motor vehicle storage;
- construction trailers.

A property owner may seek authorization to encroach into City owned or controlled properties by making an application to the City in accordance with the procedures set out below. Applications will be considered by staff on a case-by-case basis. Submission of a complete application does not guarantee that an encroachment will be approved and the City may decline to authorize an encroachment for any reason.

Where an unauthorized encroachment is identified, the owner or occupier that is encroaching will be required to apply for an Encroachment Permit within 30 days of the encroachment being discovered. Should the owner or occupier not make application for an Encroachment Permit within 30 days of the encroachment being discovered, the owner or occupier will be required to have the encroachment be removed at their expense within 60 days. If the encroachment is not removed as requested after 60 days, and no permit application is received within that time, the City will remove the encroachment at the owner or occupier's sole expense, and the City will bill the owner or occupier of the encroachment. The owner or occupier of the encroachment will receive an invoice within 30 days for all costs incurred by the City in connection with the removal of the encroachment. If the invoice remains unpaid at the end of the calendar year in which it was issued, the costs incurred by the City will be added as taxes owing on the property, or the City may pursue recovery of costs through other collection actions. Should extenuating circumstances exist that merit the City affording additional time to occupiers for removing the encroachment, the City may grant such additional time.

### **General Encroachment Permit Procedures and Requirements:**

1. Applications for encroachments into City owned and/or controlled properties must be made by completing the appropriate application form and submitting it, along with the necessary accompanying documentation including:
  - a. letter of intent explaining the circumstances for the encroachment;
  - b. drawings showing the location and area of the proposed or existing encroachment;
  - c. plans if they are required under the Building Code; and
  - d. any other documents reasonably associated or necessary to process the permit application,

to the City's Engineering & Public Works department, along with the applicable Encroachment Permit Application Fee as set out in the City's Fees & Charges Bylaw.

2. Upon receipt by the Engineering & Public Works Department, the application will be circulated for review and comment. This process may require City staff to conduct a

- site visit to inspect the encroachment or require the submission of additional documentation as may be required to process the permit application. Applicants should anticipate that this process will take up to 6 weeks.
3. If the application is accepted and the permit fee is paid, and there are no other requirements associated with the Application as outlined below, the City may issue the applicant a permit for the encroachment (the “Encroachment Permit”). The Encroachment Permit may be issued on terms and conditions determined appropriate by staff.
  4. Depending upon the circumstances of the encroachment, the City may or may not require the preparation and execution of an encroachment agreement or licence of occupation. If an such an agreement is required, the applicant will be required to pay a document preparation fee to cover the City’s costs of preparing the agreement. Depending on the nature of the encroachment, the City may also require the agreement to be registered on-title to the benefitting property. The agreement will need to be executed by the applicant owner and/or occupier (as the case may be) before the City will issue an Encroachment Permit.
  5. Depending upon the circumstances of the encroachment, the City may or may not require the payment of an Annual Permit Fee. If a fee is required, the applicant will be required to pay the fee as set out in this Policy before the City will issue an Encroachment Permit. The rate at which the annual fee will be calculated will depend on the nature of the encroachment, the degree of invasiveness, whether the encroachment has been the subject of complaint. Encroachment Permits subject to an annual fee are valid for only one year from the date of issue. Encroachment Permits for shorter periods of time may be issued and the fees will be pro-rated, monthly.
  6. Authorized encroachments must comply with all Federal and Provincial laws and City bylaws including the Boulevard Maintenance Bylaw, the Street & Traffic Bylaw, the Parks & Facilities Bylaw and the Tree Bylaw (except to the extent that the provisions of the bylaws prohibit the encroachment).
  7. The property owner will be required to indemnify and save the City harmless against any damage, including property damage, bodily injury or any other losses, which may befall the City as a result of the encroachment. Proof of appropriate insurance coverage with a limit of not less than \$2 million dollars (although the City may determine if more is required) per occurrence and naming the City as an additional insured will be required before a permit will be issued, and the validity of an Encroachment Permit will be conditional on the maintenance of the insurance coverage.
  8. If a property owner subsequently removes an authorized encroachment that is subject to both an Encroachment Permit and an encroachment agreement, they will be required to pay a fee for the costs associated with preparing a release from the encroachment agreement if it has been registered on-title.
  9. For all encroachments into City owned or controlled roads, sidewalks, boulevards etc., an Encroachment Permit and associated agreements will be signed by the General Manager of Engineering & Public Works or their designate.

10. Requests for authorization of encroachments that do not conform to this Policy and cannot be approved by staff pursuant to this policy may, at staff's discretion, be directed to City Council for consideration.
11. An Encroachment Permit or encroachment agreement will, in no case, be construed as a waiver of the City's rights in respect of the City owned and/or controlled property. The City reserves the right to direct that permitted encroachments be removed at any time on reasonable notice.
12. Minor amendments to this policy may be made from time to time by the General Manager of Engineering & Public Works working in cooperation with the General Manager of Parks Recreation and Culture.
13. The following fees, which may be amended from time to time, are applicable, and will be incorporated into the City's Fees & Charges Bylaw.