

BUILDING ENCROACHMENTS

A Guide to dealing with Buildings that encroach onto City Street and/or lane

Do portions of your existing building, or proposed building **encroach** outside the boundaries of your property onto City street and/or lane? This question and answer guide provides direction to steps you must take to validate existing encroachments or obtain approval for new encroachments.

Note: Fabric awnings and steel and glass canopies providing street level weather protection are approved by separate application to the Development Services Coordinator for Engineering Services and are not included as part of the material detailed in this guide.

What are the primary examples of encroachments?

Typical building encroachments are roof level or upper level cornices; roof overhangs; exterior cladding; window sills and copings; bay windows; and encroachments resulting from building envelope upgrades or construction error. Underground tunnels, areaways, bridges and fuel oil tanks are other examples.

How does the City regulate encroachments?

The Encroachment By-law, No. 4243 establishes the rules upon which encroachments may be accepted and how they are to be validated. The Encroachment By-law is administered by Engineering Services. The by-law establishes fees and agreement requirements. Building encroachment approvals are administered by the City Surveyor in consultation with Engineering Services Development review staff.

Under what circumstances will the City validate existing encroachments?

In the historic areas of the City (i.e. Gastown, Yaletown, Chinatown) or where encroachments are an important part of the architectural character of the neighbourhood, the City Surveyor may allow the continued existence of the encroachments. The owner will be required to enter into an encroachment agreement to validate the encroachments.

Will the City consider new encroachments?

Only in situations with unique circumstances. As a rule, new construction should not result in encroachments onto City street and/or lane. The City Surveyor will generally support new encroachments in the historic areas of the City (i.e. Gastown; Yaletown and Chinatown) where the architectural character of the area is such that new encroachments are proposed to complement existing historic architectural elements. In other areas of the City, an encroachment would only be considered to replicate an area's acknowledged historic character. Encroachments that consist of occupied floor area, such as bay windows, are not supportable.

What is an Encroachment Agreement?

An Encroachment Agreement is a legal charge, registered in priority to all non-City charges, against the title to the lands in the Land Title Office. It consists of the following parts:

- An Easement allowing the building to encroach onto City street and/or lane;
- An Indemnity whereby the owner releases and indemnifies the City against all actions that arise as a result of the presence of the encroachments. It also includes requirements for the land owner to maintain insurance to the satisfaction of the City's Director of Risk Management;
- A Statutory Right-of-Way over the lands allowing the City to enter the lands to rectify any default in the maintenance of the encroachment, including provisions for inspection and removal;

- An Equitable Charge allowing the City to appoint a receiver for the sale of the lands for payment of any sums specified in the Encroachment Agreement that are in arrears.

The Encroachment Agreement also sets out:

- Annual fees in accordance with the Encroachment By-law (currently \$140.00 per year for the first 150 square feet of encroachment and \$4 per square foot thereafter); Note : Protected heritage properties are exempt from fees related to architectural features;
- Termination provisions allowing the City to terminate the permission for the encroachment at any time and allowing the owner six months to remove the encroachment and to restore City property.

How is an Encroachment Agreement requested?

For an existing encroachment, an application, in the form of a letter, is made to the City Surveyor by supplying 6 copies of a survey certificate, originally signed and sealed by a B.C. Land Surveyor that shows the extent of the encroachment, including the total area occupied. The survey certificate should detail what the encroachment consists of and its location on the building face. The application should request that the encroachment be validated in accordance with the Encroachment By-law and include a commitment from the registered owner to enter into the City's standard Encroachment Agreement, to pay all applicable document preparation fees, annual fees and all Land Title Office fees. The application should also include contact names and addresses including, if applicable, the name of the applicant's solicitor.

If, as part of a development permit application changes are being made to an existing encroachment, it is often more practical to complete the agreement and survey after the changes are made. If this occurs, the applicant must either undertake to not apply for an occupancy permit until such time as the Encroachment Agreement is fully registered in the Land Title Office or, alternatively, arrange to register an Encroachment Agreement in advance of issuance of the Development Permit, showing the envelope in which encroachments have been approved. Applicants must recognize that this could delay occupancy.

In those rare circumstances where a new encroachment may be considered, applicants should write the City Surveyor in advance of making a development application. The City Surveyor will require rationale as to why a new encroachment should be considered and details on the extent of the proposed encroachment. If a new encroachment is supported, an Encroachment Agreement showing the approved envelope will be registered in advance of issuance of the Development Permit. The agreement will contain a clause requiring the agreement to be modified once the encroachment is built.

Even in those historic areas where a new encroachment may be considered, a proposal showing a new encroachment must not be submitted as part of a development application without the encroachment first being approved in principle by the City Surveyor.

How long does it take to complete preparation of the Encroachment Agreement?

Workloads in the Land Survey Branch and in Legal Services are such that an applicant can expect a minimum of a month between submission of all details, in a satisfactory form required to complete an Encroachment Agreement, and completion of the "Encroachment Agreement" by Legal Services.

Please note this document is only a guide and cannot be expected to cover all circumstances that apply to Building Encroachments. For specific details related to your site please contact the Land Survey Branch at 604-873-7330 or Engineering Development Services at 604-873-7773.

Applicants are advised to pre-clear any proposed encroachments onto City street and/or lane.