

## **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 and steps you must take to validate existing encroachments or obtain approval for new encroachments.

Note: Solar shading devices and steel and glass canopies providing street level weather protection are validated by a Permit to Use City property approved by separate application to Engineering Development 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, footings and encroachments resulting from building envelope upgrades or construction error. Underground tunnels, areaways, bridges, stairways, retaining walls, non-standard sidewalk or lane treatments and underground tanks are other examples.

#### **How does the City regulate encroachments?**

The Encroachment By-law, No. 4243 provides the framework upon which encroachments may be accepted and the manner in which they are to be validated. The Encroachment By-law establishes agreement requirements, stipulates required fees and is administered by Engineering Services. 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 designated as Heritage Conservation Areas (i.e. Gastown, Yaletown, Chinatown, Westend & Shaughnessy) or where encroachments are integral to a Heritage Property and contribute to 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 designated as Heritage Conservation Areas (i.e. Gastown, Yaletown, Chinatown & Shaughnessy) 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, a new 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.

## **Strata Title Conversion and Building Encroachments**

Strata Plan requirements under Section 244 (1)(f) of the Strata Property Act require that a BC Land Surveyor endorse that all buildings shown on the strata plan are within the external boundaries of the land that is the subject of the strata plan, or appropriate and necessary easements or other interests exist to provide for access to any parts of the building that are not within the boundaries. If the building encroaches onto City Street or Lane, City Council approval is required in order to raise title, close, stop-up and grant volumetric easements over the affected portions of road or lane. A standard Encroachment Agreement does not provide acceptable certainty of title as required under Section 244(1)(f) of the Strata Property Act for encroachments onto City Street. Applicants should consult the City Surveyor in such circumstances.

This is a process typically reserved for heritage buildings within historic areas of the City and the City of Vancouver may not support the provision of easements for any parts of the building on City Street. Applicants are advised to seek independent legal advice on the matter.

### **The Encroachment Agreement also sets out:**

- Any annual fees in accordance with Schedule C of the Encroachment By-law
- The rights of the City to enter upon the premises to inspect or maintain the encroachment;
- Payment by the Owner of all costs related to the removal of the encroachment;
- 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 (can be sent by email), is made to the City Surveyor to include one copy of a survey certificate (can be a pdf copy), 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 with provisions for the subsequent modification of the Encroachment Area upon completion of the construction. 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. Once again, the applicant is advised that building encroachments into City Street will create obstacles if strata titling the property.

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 at least one 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.

### **What are the fees and charges associated with the registration of an Encroachment Agreement?**

All related fees and charges are stipulated within the Schedules attached to Encroachment By-law (plus GST where applicable). These are updated annually through a By-law amendment enacted by City Council. Some of the most common fees are noted below:

- Preparation of an agreement having reference to an encroachment
- Annual charges in accordance with Schedule C
- Any fee payable to effect the registration of an agreement to be registered in the Land Title Office
- Request for information relating to an encroachment

- Granting of an easement over a portion of a street or lane to accommodate encroachment of a building (raise title, close, stop-up and grant volumetric easements over the affected portions of road or lane)

***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 [land.survey@vancouver.ca](mailto:land.survey@vancouver.ca) or 604-873-7330.***

***Applicants are advised to obtain pre-authorization for any proposed encroachments onto City street and/or lane.***

January 2021