



# **Highway Encroachment**

Bylaw 628

Effective 1992 December

Consolidated to February 2020

**CASTLEGAR**

# Highway Encroachment Bylaw 628

## **A bylaw to Authorize Highway Encroachments.**

WHEREAS Section 582 (1.1) of the Municipal Act R.S.B.C. 1979, c. 290 provides that except as permitted by a bylaw under Section 582 (1) of the Municipal Act, no person shall excavate in, cause a nuisance on, encumber, obstruct, injure, foul or damage any portion of a highway or other public place;

NOW THEREFORE the Council of the City of Castlegar in, open meeting assembled, enacts as follows:

1. This bylaw may be cited for all purposes as "City of Castlegar Highway Encroachment Agreement Bylaw 628, 1992".
2. No Person shall encumber or obstruct any highway in the possession of the City of Castlegar by a structure, building, excavation, chattel or landscape feature except under the terms and conditions set out in an agreement substantially in the form of Schedule "A" or Schedule "B" of this bylaw.
3. Every person proposing to encumber or obstruct a highway in the City's possession shall execute and submit a copy of an agreement substantially in the form of Schedule "A" or Schedule "B" of this bylaw, together with a plan of the proposed encumbrances or obstruction drawn to scale (and the required security)
4. Every proposal for placement or construction of an encroachment shall be submitted to Council with a report and recommendation from the Director of Development Services.
5. Authorization for an encroachment may be refused in any case where the proposed encroachment may create a hazard to persons or property or interfere with the construction or operation of existing or proposed highway improvements.
6. The Mayor and City Clerk are authorized to execute and affix the corporate seal to every agreement authorized in accordance with this Bylaw.
- 6a. Where an existing building, structure, sign or any part of it encroaches onto a municipal road as a result of the dedication of land for road widening purposes, the City may enter into an encroachment agreement with the owner of land, on the terms acceptable to the City and the owner. This bylaw shall not apply where the City and owner have entered into the encroachment agreement (**Bylaw 1314**)
7. Highway Encroachment Agreement Bylaw 624 is hereby Repealed
8. This bylaw shall come into full force and effect upon final adoption.

READ A FIRST TIME this 17th day of November, 1992.

READ A SECOND TIME this 17th day of November, 1992.

READ A THIRD TIME this 17th day of November, 1992.

RECONSIDERED, AND ADOPTED this 8th day of December, 1992.

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Mayor

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Director of Corporate Services

<b>List of Amending Bylaws</b>
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1314      February 3, 2020
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NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and covenants herein contained and the sum of Ten Dollars (\$10.00) now paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, and other good and valuable consideration, the parties agree as follows:

**Definition**

1. In this Agreement, the term "highway" shall have the meaning ascribed to it by the Local Government Act [RSBC 2015], as amended.

**Permission to Encroach**

2. The City hereby grants to the Owner permission to encroach upon that portion of a highway in the City which is shown outlined in heavy red line on the drawing attached as Schedule "A" hereto (the "Encroachment Area") for the sole purpose of maintaining an existing basement stairwell.
3. The Owner acknowledges and agrees that the Encroachment Area is a highway, and that the City has limited power to authorize the private use of a highway. The Owner further acknowledges and agrees that any rights granted by the City to the Owner herein are subject to the public's right to pass and repass over a highway and that the City has full authority pursuant to this Agreement to require the removal of the encroachment permitted herein, at any time, without notice and without compensation to the Owner.

**Payment**

4. In consideration for the permission granted in section 2 hereof, the Owner covenants and agrees to pay to the City the sum of TEN DOLLARS (\$10.00) concurrent with the execution of this Agreement, receipt of which is acknowledged by the City.

**Construction, Alteration and Maintenance of the Works**

5. The Owner may, at his/her/their sole expense, excavate and do such other work on the Encroachment Area as may be necessary to install and construct the Works in a safe manner in accordance with any necessary permit and plan acceptable to the Manager of Engineering. All Works shall be completed to the City's approved standards for such construction.
6. The Owner, shall at all times, and at his/her/their sole expense keep and maintain the Works in good and sufficient repair to the reasonable satisfaction of the City, and no structural alterations shall be made to the Works except in accordance with any necessary permit and plan acceptable to the Manager of Engineering.

7. The Owner shall be solely responsible for the due and proper payment of all municipal property taxes and other governmental fees, levies and charges which may be assessed and payable by the Owner in respect of the Works on the Encroachment Area.

#### Removal of Works

8. The Owner understands and agrees that the City may at any time, in its sole discretion, withdraw the rights it has granted herein to the Owner. In the event of such withdrawal, for any cause or reason whatsoever, the Owner shall, at his/her/their sole expense, within such time as may be specified by the City's Council, remove the Works, and fill up any excavation made, constructed, or maintained with respect to it, and otherwise restore the site to the satisfaction of the Manager of Engineering or his/her/their designate.
9. Without restricting the generality of Section 8, in the event the Owner:
  - (a) fails to keep the Works or any covering or structure pertaining thereto in good and sufficient repair to the reasonable satisfaction of the City;
  - (b) fails or refuses to remove the Works, fill up any excavation or restore the site to the satisfaction of the Manager of Engineering or his/her/their designate pursuant to Section 8 hereof;
  - (c) cancels the insurance required to be maintained on the Lands and in respect of the Encroachment Area and the Works pursuant to Section 12;
  - (d) violates any provision of this Agreement, or any provision of the City's bylaws relating to the Works;

all rights accruing to the Owner under this Agreement shall, unless the City decides otherwise, cease 30 days after receipt by the Owner of written notice from the City if the default is not remedied by the Owner within that period. If the Owner does not remedy the default, the Manager of Engineering or his/her/their designate may, at their sole discretion, enter onto the Lands and the Encroachment Area to affect the removal of the Works. The Owner covenants and agrees that the City shall be entitled to recover all costs of such removal from the Owner and that the Owner shall pay such costs immediately upon receipt of the City's bill for the same.

#### Emergency

10. The Owner grants to the City the right at any time, in the case of an emergency or apprehended emergency, without compensation to the Owner and without notice, to remove, destroy or alter the Works. All necessary and reasonable costs incurred by the City in alleviating the emergency or apprehended emergency shall be borne entirely by the Owner and may be recovered by the City from the Owner in accordance with Section 9.

11. Notwithstanding the remedies provided in Sections 8, 9 and 10 hereof, the City shall retain the right to proceed with the enforcement of any security or indemnity provided in satisfaction of any claim, loss or expense of any kind whatsoever arising under this Agreement or from the permission to encroach granted herein.

### **Indemnification and Insurance**

12. The Owner:
- (a) hereby indemnifies, saves harmless, releases, and forever discharges the City, its members of Council, officers, employees, and agents and contractors from and against any, and all manner of actions, causes of action, claims, debts, suits, losses, costs, demands and promises whatsoever, whether known or unknown, which the Owner or any other person now has or may at any time have by reason of:
    - (i) the permission to encroach granted hereby; or,
    - (ii) the construction, maintenance, existence, use or removal of the Works including, without in any way restricting the generality of the foregoing, a claim for loss or injury to persons or property attributable to, arising from, or allegedly attributable to or arising from, the construction, installation, or maintenance of the Works, including but not limited to, the Owner's negligence or failure to comply with the City's bylaws or with any provision of this Agreement; and
  - (b) agrees to obtain and maintain comprehensive general liability insurance on the Lands providing coverage for personal injury and property damage arising out of the existence and use of the Encroachment Area and the Works, in the amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and on other terms satisfactory to the City and agrees that the City, shall at all times be named as co-insured in the policy of insurance. A copy of the current insurance policy shall be provided annually to the City by the insurer. The policy shall also contain a clause providing that the insurer will give the City thirty (30) days prior written notice in the event of cancellation or material change. The amount of insurance provided for herein shall be increased if so required by the City to a reasonable amount specified by the City, on 120 days written notice.

### **Public Works**

13. The City's officers, employees, agents and contractors shall have the right at any time to enter upon the Lands and the Encroachment Area for the purposes of inspecting the Works, and reconstructing, maintaining, repairing, inspecting, testing or removing any public works, utility or road existing at the date of this Agreement in the vicinity of the Works. The City shall in undertaking such activities use reasonable efforts to cause its officers, employees, agents, and contractors to minimize any disruption or damage to the works.

14. All costs to repair or replace the Works which occur, as a result of the City's activities pursuant to Section 13, and all necessary and reasonable costs incurred by the City as part of the City's activities pursuant to Section 13 in excess of those costs that would have been incurred if the Works did not exist, shall be borne entirely by the Owner. These costs may be recovered by the City from the Owner in accordance with Section 9.
15. This Agreement shall not in any way restrict the right of the City at any time to:
  - (a) improve, widen, raise, or lower any roadway or boulevard abutting or adjoining the Lands; and
  - (b) improve, enlarge, change, add to or delete from any underground utility in or in the vicinity of the Works;notwithstanding that the effect of such activities may be to eliminate or render the Works useless for the purposes of the Owner.
16. The Owner hereby releases and forever discharges the City from all manner of claims of any nature whatsoever which may arise by reason of any act or omission of the City pursuant to Sections 8, 9, 10, 13 and 15 of this Agreement.
17. No provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the City, in favour of any third party, shall relieve the Owner from liability to the City, whether such liability arises under this Agreement, under the provisions of the Local Government Act [RSBC 2015] as amended.
18. Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Works by the City and, without limitation, shall not be entitled to business losses, loss of market value, relocation costs or other consequential loss by reason of the removal of the Works or by reason of the permission to encroach granted herein.
19. Wherever this Agreement creates a power or obligation of the City to make a decision, or to exercise any contractual right or remedy, the City may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principle of procedural fairness or the rules of natural justice, shall have any application.
20. This Agreement grants no interest in land in the Encroachment Area to the Owner.
21. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default.
22. All notices, demands, and payments required or permitted to be given hereunder shall be in writing and may be delivered personally or electronically. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of 3 days after it is posted, addressed in accordance with the addresses on page 1 hereof, or at such other address or addresses as may from time to time be notified in writing by the parties hereto, provided that if there shall be between the time of mailing and the actual receipt of the



- notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effected if actually delivered.
23. Whenever the singular is used in this Agreement, the same is deemed to include the plural or the body politic or corporate as the context so requires.
  24. Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, officers, and invitees of such party.
  25. Any opinion which the City is entitled under this Agreement to form may be formed on behalf of the City by the Manager of Engineering.
  26. If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
  27. This Agreement shall ensure to the benefit of and be binding on the parties hereto notwithstanding any rule of law or equity to the contrary.
  28. The Owner shall not be entitled to transfer or assign this Agreement, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the Encroachment Area. Prior to transferring, assigning, giving or in any way alienating the Lands (the "Transfer"), the Owner shall advise the prospective transferee of the existence of this Agreement and, as a condition of the Transfer, cause the transferee to become a party to this Agreement in the place of the Owner.
  29. This Agreement shall remain in full force and effect until terminated in accordance with Sections 8 or 9 hereof and the Works are removed from the Encroachment Area, at which time the permission granted to the Owner herein shall be revoked and the parties shall no longer have any obligations to each other pursuant to the Agreement.
  30. The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.
  31. Time is of the essence in this Agreement.
  32. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the date and year first above written.

The Corporate Seal of THE CORPORATION OF  
THE CITY OF CASTLEGAR was hereunto  
affixed in the presence of:

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Print name

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Corporate Officer

The Common Seal of (insert name of Owner)  
was hereunto affixed in the presence of:

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Owner (print name)

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Signature

Bylaw

CASTLEGAR

**SCHEDULE B  
LICENCING AGREEMENT**

THIS LICENSE dated this day of \_\_\_\_\_, 20\_\_\_\_.

BETWEEN:

THE CORPORATION OF THE CITY OF CASTLEGAR  
460 Columbia Avenue Castlegar, British Columbia V1N 1G7  
(the "Municipality")

OF THE FIRST PART  
AND:

(the "Licensee")  
OF THE SECOND PART

WHEREAS

1. the Licensee has requested permission to operate or situate a [STRUCTURE] on a highway or public place in the City of Castlegar; and
2. The Municipality is authorized by the Municipal Act R.S.B.C. 1979, c. 290 to regulate all uses of or involving a public place.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements herein set forth, the parties hereto covenant and agree as follows:

**Grant of License**

The Municipality hereby grants a license to the Licensee to use all or part of the land comprising that portion of land shown outlined in black on Schedule "A" hereto (the "License Area") for the purpose of (\_\_\_\_)(collectively, the "Concession") on the terms and conditions herein (the "License").

**Term of License**

The term of this License shall be for (the Term).

**License Fee**

In consideration of the License granted herein, the Licensee shall pay to the Municipality the sum of (\$\_\_\_\_) on or before May 1 in each year of the term of this License.

**Development of Congestion Area**

The Licensee may locate the following in the License Area for the operation of the concession: (1st permitted structures or objects).

**Operation**

The Licensee shall operate the Concession in accordance with the following terms and conditions:

- a. Longer hours of operation may be approved by the Municipality, in the Municipality's sole discretion.
- b. All food products sold from the Concession by the Licensee, and the method of preparation and packaging of all food products, shall comply with the provincial health regulations governing sanitation in public eating and drinking places.
- c. No signs shall be displayed by the Licensee on the Concession Building, the Storage Building or elsewhere in the License Area unless prior approval has been given to the Licensee by the (Building/License Inspector) or his designate. The Municipality shall be entitled to erect signs to indicate to the public that the License Area is the property of the Municipality, notwithstanding the operation of the Licensee from the License Area.
- d. All persons employed by the Licensee in the operation of the Concession shall be trained and competent in the conduct of their duties. The Licensee shall, within twenty-four (24) hours of receiving a demand in writing from the Municipality, remove any employee from the operation of the Concession whose conduct in dealing with the public or state of health is, in the opinion of the Municipality, detrimental or hazardous to the public.
- e. The Licensee shall comply with all provincial and federal statutory requirements in respect of its employees, servants or agents, as applicable, including but not limited to, all requirements of the Employment Standards Act, the Income Tax Act (Canada), the Unemployment Insurance Act (Canada), Pension Plan (Canada), and the Workers Compensation Act.
- f. The Licensee shall pay all expenses whatsoever in connection with the operation of the Concession, including without limiting the generality of the foregoing:
  - i. the purchase of supplies, equipment, vehicles and staff uniforms;
  - ii. maintenance of equipment, vehicles and uniforms;
  - iii. supply of staff and payment of all staff salaries, benefits and related costs;
  - iv. all fees for licenses and permits which may by law be required, including a municipal business license, and all taxes imposed, with respect to the operation of the Concession;
  - v. all utility charges, including initial installation charges and ongoing user charges; and
  - vi. all expenses, charges, penalties and costs which may be incurred by reason of liens for non-payment of labour or materials in respect of the construction by the Licensee in or on the License Area.
- g. The Licensee shall obtain and maintain a municipal business license during the term of this License.
- h. The Concession shall be operated by the Licensee in a businesslike manner so as not to interfere with, or cause a nuisance to, any nearby public facilities.
- i. The (Building/License Inspector) or his designate may at all reasonable times enter upon the License Area in order to ascertain whether the terms and conditions of this License are being observed.
- j. The Licensee shall permit the Municipality to inspect the books of account of the Licensee and the annual financial reports, if any, relating to the operation of the Concession, upon request.

**Maintenance of License Area**

6. The Licensee shall always keep the License Area in a clean and sanitary condition. The Licensee shall dispose of all garbage and debris including paper, cups, cartons and so forth, on an hourly basis to the satisfaction of the (Building/License Inspector) or his designate. All garbage and debris shall be placed by the Licensee in containers provided therefore and, in an area, designated by the Municipality for this purpose, in a manner approved by the (Building/License Inspector) or his designate and satisfactory to the appropriate health authorities. All garbage, debris and refuse so collected shall be removed by the Municipality, at the Municipality's sole cost and expense.
7. The (Building/License Inspector) or his designate shall be entitled to require the Licensee to clean the License Area if it is not kept clean in accordance with the provisions -herein. In the event the Licensee fails to comply with a clean-up order of the (Building/License Inspector) or his designate within 24 hours thereof, the (Building/License Inspector) or his designate shall cause the area to be cleaned up, with the cost thereof being charged against the cash amount of any security posted with the Municipality pursuant to section 9 hereof.
8. The Municipality may, in its sole discretion, require that the Licensee provide security to the Municipality in a form and amount acceptable to the Municipality, the return of which shall be conditional on the Licensee complying with the terms and conditions herein, including, without limiting the generality of the foregoing, the requirement to comply with any clean-up order of the Municipality.

**Cancellation and Early Termination**

9. If the Licensee defaults in the observance or performance of any of the terms and conditions contained herein, then the Municipality may terminate this License immediately upon the Municipality becoming aware of such default, without any prior notice to the Licensee, any rule or law of equity to the contrary notwithstanding. Notwithstanding any other provision herein, it is expressly agreed that either party hereto may at any time terminate this License upon giving thirty (30) days' notice, in writing, to the other party.

**Site Clean-up**

10. Upon expiration or earlier termination of this License, the Licensee shall leave the License Area in a neat and tidy condition and all improvements to the License Area made by the Licensee shall become the property of the Municipality, provided that if required by the Municipality, the Licensee shall promptly remove any buildings, structures, works or improvements constructed thereon by the Licensee within 48 hours of written notice by the (Building/License Inspector) or his designate.

**Indemnity**

11. The Licensee will indemnify and save harmless the Municipality from and against any liabilities, damages, costs, expenses, causes of action, actions, claims, suits and judgments which the Municipality may incur or suffer or be put to by reason of or in connection with

or arising from any breach, violation or non-performance by the Licensee of any obligation hereunder to be observed or performed by the Licensee, any wrongful act or neglect of the Licensee on or about the License Area related to the Licensee's use and occupancy of the License Area, any damage to property related to the Licensee's use and occupancy of the License Area, or the death of or injury to any person related to the Licensee's use and occupancy of the License Area.

### Insurance

12. The Licensee, at the Licensee's sole cost and expense, shall obtain and keep in force throughout the term of this License, and any renewal thereof, comprehensive general liability insurance to protect and indemnify itself and the Municipality against claims for personal injury, death or property damage occurring upon, in or about the License Area, in an amount of not less than \$5,000,000.00 per accident or occurrence, and otherwise with an insurer and with a deductible and on other terms satisfactory to the Municipality.

### Nature of License

13. the occupancy of the License Area will under all circumstances be viewed as a license Only and will not create nor be deemed to create any interest in the License Area or the Park in favor of the Licensee.
14. If the Licensee duly and regularly pays the license fee, and observes and performs all of the covenants and agreements herein contained on the part of the Licensee to be performed, the Municipality, upon written request by the Licensee delivered not less than three (3) months before the expiration of the term of this License, may grant to the Licensee a renewal of this License for a further term of (12) months, upon the same terms, covenants and conditions contained herein except as to the license fee and that there shall be no further right of renewal. The license fee for such renewal term shall be negotiated by the parties hereto prior to the expiration of the term of this License. Notwithstanding the foregoing, any termination of this License by the Municipality pursuant to the provisions of this License shall automatically terminate any and all rights of the Licensee which may have arisen by virtue of the Licensee's exercise of the option to renew hereby granted.

### General

15. The Licensee shall not transfer or assign. this License, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the License Area.
16. The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements<sup>1</sup> whether verbal or written, between the parties with respect to the subject matter hereof.
17. This License shall enure to the benefit of and be binding upon the parties hereto and their successors, administrators, executors, heirs and permitted assigns.
18. Each of the parties hereto hereby covenants and agrees to execute such further and other documents and instruments, and to do such further and other things as may be necessary to implement and carry out the intent of this License.
19. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.

20. All notices, demands and payments required or permitted to be given hereunder shall be in writing and may be delivered personally, sent by telegram, facsimile transmission or telex, or may be forwarded by first- class prepaid registered mail to the addresses set forth on the first page hereof. If notice is given by the Licensee to the Municipality, it shall be to the attention of the (Building/License Inspector). Any notice delivered or sent by telegram, facsimile or telex shall be deemed to be given and received at the time delivery. Any notice mailed as aforesaid shall be deemed to have been given and received on the expiration of 3 days after it is posted, addressed in accordance with the provisions herein, or such other address or addresses as may from time to time be notified in writing by the parties hereto, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effected if actually delivered.
21. Should any part of this License be declared or held invalid for any reason, such invalidity shall not affect the validity of the remainder which shall continue in full force and effect, and be construed as if this License had been executed without the invalid portion, and it is hereby declared the intention of the parties hereto that this License would have been executed without reference to any portion which may, for any reason, be hereafter declared or held invalid.
22. Every reference to each party is deemed to include the heirs, executors, administrators, successors, permitted assigns, employees, agents, officers and invitees of that party whenever the context so requires or allows.
23. Any opinion which the Municipality is entitled by virtue of this License to form may be formed on behalf of the Municipality by the (Building/License Inspector) or his designate, in which case the opinion of the (Building/License Inspector) or his designate shall be deemed an opinion of the Municipality for the purposes of this License.
24. Time is of the essence of this License.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the date and year first above written.

The Corporate Seal of THE CORPORATION OF THE CITY OF CASTLEGAR was hereunto

affixed in the presence of:

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Print name



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Corporate Officer

The Common Seal of (insert name of Owner)  
was hereunto affixed in the presence of:

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Owner (print name)

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