

CULTUS LAKE PARK BOARD

BYLAW # 2006-01

Encroachment Bylaw

A bylaw to regulate the granting of encroachment permits on public property within Cultus Lake Park pursuant to *The Cultus Lake Park Act, 1932*.

Read a first time this 14th day of June, 2006

Read a second time this 12th day of July, 2006

Read a third time and finally adopted this 13th day of September, 2006


CHAIR


CAO/MANAGER

Cultus Lake Park Board

Bylaw No. 2006-01

A bylaw to regulate the granting of encroachment permits on public property within Cultus Lake Park pursuant to *The Cultus Lake Park Act, 1932*

The Cultus Lake Park Board in open meeting assembled, enacts as follows:

1. This bylaw may be cited as “**Encroachment Bylaw 2006-01**”.

INTERPRETATION

2. In this bylaw:

“Applicant” means the Lessee who makes application for an Encroachment Permit;

“CLPB” means the Cultus Lake Park Board;

“Encroachment” means a building, structure or physical object occupying a part of the surface, subsurface or airspace including without limitation, natural materials such as plants, soil and rocks;

“Encroachment Agreement” means an agreement required under this Bylaw;

“Encroachment Permit” means a permit for an Encroachment issued under the authority of this Bylaw;

“Lessee” means any person who is the registered Lessee, or Lessee under agreement, of real property, and includes any person in actual or apparent possession of real property under a lease, license or agreement with another owner;

“Long-Term Encroachment” means an Encroachment that will be in place one year or longer;

“Manager” means the person holding the office of CAO/Park Manager for the CLPB and includes their delegate;

“Permit Holder” means the Lessee who has been issued an Encroachment Permit; and,

“Temporary Encroachment” means an Encroachment that will be in place for less than one year.

APPLICATION REQUIREMENTS AND APPROVAL PROCESS

3. A Lessee who wishes to construct or place an Encroachment on any public property within Cultus Lake Park shall make application on the form provided by the CLPB.

“Encroachment Bylaw 2006-01”

4. Every application shall include:
 - (1) a description of the location, extent, nature and purpose of the Encroachment
 - (2) such other information, as required by the Manager, to understand the nature of the proposed Encroachment and its impact;
 - (3) a plan, sketch or drawing, satisfactory to the Manager, showing the details of the Encroachment;
 - (4) the fee required under Schedule “A”
5. Prior to an Encroachment Permit being issued for a Long-Term Encroachment, the Applicant must enter into an Encroachment Agreement in the form provided by the CLPB.

GENERAL REQUIREMENTS

6. Where the Encroachment would restrict public access over or across the encroachment area, the Manager shall mail or otherwise deliver notification of the proposed Encroachment to the owners of properties directly affected by the Encroachment whose properties are within 30 metres of the proposed Encroachment.
7. No person shall excavate for, construct, place or maintain any Encroachment in, on, or under a Highway unless the person holds a valid Encroachment Permit for that Encroachment.
8. Where an existing Encroachment is deemed to affect the CLPB's ability to carry out its work within the highway or where the safety of the public may be affected by the Encroachment, the Permit Holder may be required to modify the Encroachment and such modification shall be at the Permit Holder's expense.
9. Where a Permit Holder requests an amendment to an Encroachment Permit or an Encroachment Agreement, the amendment must be in compliance with this bylaw and approved by the CLPB, and any modification to the Encroachment shall be at the Permit Holder's expense.

CONDITIONS

10. All Encroachment Permits are subject to the conditions set out in this Bylaw, and all holders of an Encroachment Permit shall conform strictly to those conditions and to any special conditions set out in the applicable Encroachment Permit.
11. A Permit Holder shall, before commencing the construction repair or removal of any Encroachment, obtain all permits and approvals required under any other CLPB Bylaw.
12. A Permit Holder shall, at all times, comply with the terms of the Encroachment Permit or Encroachment Agreement and any breach or termination thereof may result in a revocation or termination of the applicable Encroachment Permit or Encroachment Agreement.

“Encroachment Bylaw 2006-01”

13. An appeal of the revocation or termination of the applicable Encroachment Permit or Encroachment Agreement may be made to the Board and the decision of the Board shall be final.
14. A Permit Holder shall keep an Encroachment in good repair. In the event that the Permit Holder fails or neglects to keep an Encroachment in good repair, the Manager may provide notice to the Permit Holder of any deficiency in the Encroachment and request that such deficiency be rectified. Upon thirty (30) days notice to the Permit Holder the Encroachment Permit may be revoked, the Encroachment Agreement terminated, and the Encroachment removed. Any costs incurred by the CLPB to remove the Encroachment shall be recovered from the Permit Holder.

SEVERABILITY

15. If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed portion.

OFFENCE AND PENALTY

16. Every person who, contrary to the provisions of this bylaw, suffers or permits any act or thing to be done or who neglects to do or refrains from doing anything required to be done by this bylaw commits an offence.
17. Every person who commits an offence under this bylaw shall upon summary conviction be liable to the maximum penalties that may be imposed pursuant to the *Cultus Lake Park Act* for each and every offence, and each day that an offence continues shall constitute a separate offence against this bylaw.

Received first reading on the ____ day of _____, 2006.
Finally passed and adopted on the ____ day of _____, 2006.

“Owen Skonberg”
CLPB Chair

“Scott Coulson”
CLPB CAO/Park Manager

SCHEDULE “A”

SCHEDULE OF FEES

1. Encroachment Permit Application Fees
 - (1) Non-refundable Application Fee \$ 400.00
 - (2) Park Board Referral Fee \$ 100.00
2. Permit Fee for Temporary Encroachment \$ 100.00
3. Annual Fee for Long-Term Encroachment \$ 100.00 + Rental
Plus an annual per square metre rental rate Rate per square metre
based on the zoning of the lands adjacent
to the Encroachment as indicated below:

<u>Zoning Classification</u>	<u>Annual Rental Rate/Square Metre</u>
Village Centre Area	\$83.00
Residential Area:	
R-1 (Suburban Residential)	\$16.00
R-2 (Urban Residential)	\$60.00
R-3 (Waterfront Residential)	\$60.00
R-4 (Hillside Residential Area)	\$60.00
Recreation Area	\$60.00

POLICY DIRECTIVE – ENCROACHMENTS

SUBJECT: Policy for Encroachments on Cultus Lake Park Board Land

APPROVAL DATE: _____ LAST REVIEW DATE: _____

REFERENCE: The Cultus Lake Park Act, 1932

A. POLICY:

To manage private encroachments on Cultus Lake Park Board (“CLPB”) property.

B. GENERAL GUIDELINES

In matters relating to private encroachments being proposed on CLPB property, the following guidelines shall be followed:

- a) A Lessee proposing to place an encroachment within CLPB property shall complete an encroachment application, in the form attached to this policy as Schedule “A”, and submit the application to the CAO/Park Manager (“Manager”).
- b) The Manager will review the application and upon being satisfied that sufficient information has been provided to determine the location and extent of the encroachment, the application will be referred to the Public Works Department for review and comment.
- c) In considering whether to recommend approval for an encroachment, the Manager must consider the term of the encroachment, the probability of the encroachment having to be removed or modified as a result of the CLPB or a utility company wishing to place works in the location of the encroachment, and those future costs of the Permit Holder would incur to modify or remove the encroachment.
- d) Where the Manager is not prepared to recommend approval of an Encroachment Permit and the applicant wishes further consideration, the Manager will submit a report for the Cultus Lake Park Board’s review and consideration at the next regular Park Board meeting.
- e) Encroachment Permits for Temporary Encroachments shall be issued substantially in the form attached as Schedule “B” to this policy, subject to payment of the applicable fee.
- f) Encroachment Permits for Long-Term Encroachments shall be issued substantially in the form attached as Schedule “C” to this policy, subject to payment of the applicable fee.
- g) Where an Encroachment Permit for a Long-Term Encroachment has been issued, a comment to this effect shall be noted on the CLPB lease record for the affecting property; and further, the encroachment area is to be shown on the CLPB’s base maps.

Chief Administrative Officer

Policy Directive – Encroachments
Schedule “A”

CULTUS LAKE PARK BOARD
PROPERTY ENCROACHMENT APPLICATION

Applicant's Name: _____

Applicant's Address: _____

Civic Address of Affecting Property: _____

Applicant's Home Phone: _____ Work Phone: _____

Type of Encroachment:

Temporary Encroachment (less than one year)
From: _____ to _____

Long-Term Encroachment (one year or longer)
From: _____ to _____

Document Submission:

- Description of location, extent, nature and purpose of Encroachment
- Plan, sketch or drawing showing details of Encroachment
- Statement of the manner in which the Encroachment will be constructed and maintained that will ensure the preservation and continued safe use of the land for Cultus Lake Park Board and public access purposes
- Application Fee \$400.00 Receipt Number: _____ Date Paid: _____

OFFICE USE ONLY

Referrals:

- Public Works Department Supported: _____ YES _____ NO
- Planning and Public Works' Advisory Committee Supported: _____ YES _____ NO
- Park Use Plan Advisory Committee Supported: _____ YES _____ NO
- Security & Environmental Advisory Committee Supported: _____ YES _____ NO

Recommend Approval: _____ Recommend Denial: _____
(Signature of CAO Park Manager)

-
- Request for referral to Cultus Lake Park Board
 - Referral Fee \$100.00 Receipt Number: _____ Date Paid: _____
 - Considered by CLPB on: _____ Approved / Denied
-

Policy Directive – Encroachments
Schedule “B”

CULTUS LAKE PARK BOARD
ENCROACHMENT PERMIT FOR TEMPORARY ENCROACHMENT

Permit No.: _____

Permit Issued To: _____

Address of Encroachment: _____

Term of Permit: _____

General Intent of Permit:

Conditions of Permit:

Permit Fee: \$ _____ **Receipt Number:** _____ **Date Paid:** _____

Issued this _____ day of _____, 200 ____.

CAO/Park Manager

Policy Directive – Encroachments
Schedule “C”

CULTUS LAKE PARK BOARD
ENCROACHMENT PERMIT FOR LONG-TERM ENCROACHMENT

Permit No.: _____

Permit Issued To: _____

Address of Encroachment: _____

Term of Permit: _____

General Intent of Permit:

Conditions of Permit:
Encroachment Agreement Attached. _____

Annual Fee: \$ _____ (\$100.00 plus an annual per meter rental rate of \$ _____.)

- *To be paid annually in advance of the anniversary date of issuance.*

Receipt Number: _____ Date Paid: _____

Issued this _____ day of _____, 200__.

CAO/Park Manager

Policy Directive – Encroachments
Schedule “D”

ENCROACHMENT AGREEMENT

THIS AGREEMENT dated the _____ day of _____, 200__.

BETWEEN:

THE CULTUS LAKE PARK BOARD

an organization governed under the *Cultus Lake Park Act, 1932*,
having its office at 4165 Columbia Valley Highway
Cultus Lake, BC V2R 5B5
(hereinafter called the “CLPB”)

OF THE FIRST PART

AND:

(hereinafter called the “Permit Holder”)

OF THE SECOND PART

WHEREAS:

- A. The Permit Holder is the leaseholder of the lands in Cultus Lake Park in the Province of British Columbia, more particularly known and described as: _____ (hereinafter called the “Property”).
- B. The Permit Holder has requested that the CLPB grant permission to construct, use or continue the use or existence of the following encroachment(s):

(the “Encroachment(s)”)

upon CLPB land, which request the CLPB has agreed to grant, subject to the provisions of the *Encroachment Bylaw 2006, No. 12*, in force from time to time, and subject to the terms and conditions herein set forth.

NOW THIS AGREEMENT WITNESSETH THAT in consideration of the premises and the covenants contained herein by the Permit Holder to be performed and observed, the parties agree as follows:

1. The CLPB (so far as it legally can, but not otherwise) hereby grants to the Permit Holder a permit to construct and maintain the Encroachment(s) upon the CLPB land.
2. The Permit Holder covenants and agrees with the CLPB that it will pay to the CLPB upon the execution of this agreement the sum of _____ DOLLARS (\$ _____) and a like sum on each succeeding anniversary date as prescribed by the Encroachment Permit.
3. The Permit Holder will at all times, and at its own expense, build, keep and maintain the Encroachment(s) in good and sufficient repair to the satisfaction of the CLPB.
4. The Permit Holder agrees that if the construction, maintenance, use or removal of the Encroachment(s) makes an alteration or change necessary to any meter, water service, sewer, or other public works or utility in the vicinity of the Encroachment, the Permit Holder will forthwith reimburse the CLPB for the cost of doing so.
5. If the Permit Holder fails to keep the Encroachment(s) in good and sufficient repair to the satisfaction of the CLPB, or fails to remove them when required by this agreement, the CLPB shall be entitled to so such work and the Permit Holder shall pay the costs to the CLPB forthwith.
6. The CLPB's servants or agents shall have the right at all times to enter the Property or the Encroachment(s) for the purpose of constructing, maintaining, inspecting or removing any public works or utility running underneath the Highway or in the vicinity of the Encroachment(s).
7. The Permit granted herein may be revoked immediately by notice in writing to the Permit Holder, at any time by the CLPB if, in the opinion of the CAO/Park Manager, the area occupied by the Encroachment(s) is required for any municipal purpose or the Permit Holder defaults in the performance of its obligations under this agreement.
8. If the Permit is revoked then the Permit Holder will, at their own expense and within such period as may be specified by the CLPB, remove the Encroachment(s) and fill up any excavation made, constructed, or maintained, with respect to them, and put the Property in a condition to the satisfaction of the CLPB.
9. The covenants herein shall not in any way restrict the right of the CLPB at any time to alter the Property (whether by widening it or by raising or lowering the elevations) and notwithstanding that the effect of such alternation in width and/or elevation may be to render the Encroachment(s) useless for the purposes of the Permit Holder, the Permit Holder covenants that it releases and forever discharges the CLPB from all manner or claims of any nature whatsoever relating to the Encroachment(s).
10. The Permit Holder hereby charges its interest in the Property in favour of the CLPB for the payment of all sums which may at any time hereafter be payable by CLPB in respect of any claims, loss, damage or expense arising from the construction, maintenance or existence of the Encroachment(s) or from the Permit hereby granted, and to answer any indemnity or payment provided in the CLPB's Encroachment Bylaw or under the terms

of this agreement, the amount owing with interest at twelve percent (12%) per annum may be recovered in any court of competent jurisdiction, or the same may be recovered in like manner as lease fees against the Property.

- 11. The Permit Holder assumes all risk of personal injury and death and property damage arising out of, in any way connected with or what would not have occurred "but for" the existence of the Encroachments whether or not the same is caused by the negligence of the CLPB, a utility company, or its or their contracts, subcontractors workmen or licensees.
- 12. This Agreement shall enure to the benefit of the Permit Holder, and further, the Permit Holder covenants that before agreeing to transfer, sell or otherwise convey its interest in the Property to a third party, that it shall provide such party express notice as to the terms of this agreement and shall ensure that such party signs an agreement with the CLPB agreeing to be bound thereto as a condition of such transfer or conveyance.
- 13. Whenever the singular or masculine are used throughout this agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic, where the context or the parties hereto so require.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

THE SEAL OF THE)
CULTUS LAKE PARK BOARD was)
 Hereunto affixed in the presence of:)
)
 _____)
 CHAIR)
)
 _____)
 CAO/PARK MANAGER)

SIGNED, SEALED AND DELIVERED by the Permit Holder in the presence of:

_____)	_____)
Name)	(Permit Holder #1)
_____)	_____)
Address)	(Permit Holder #2)
_____)	
Occupation)	
(As to both signatures)	

**CULTUS LAKE PARK BOARD
PROPERTY ENCROACHMENT APPLICATION**

Applicant's Name: _____

Applicant's Address: _____

Civic Address of Affecting Property: _____

Applicant's Home Phone: _____ Work Phone: _____

Type of Encroachment:

- Temporary Encroachment (less than one year)
From: _____ to _____
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Document Submission:

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Referrals:

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- Planning and Public Works' Advisory Committee Supported: _____ YES _____ NO
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- Security & Environmental Advisory Committee Supported: _____ YES _____ NO

Recommend Approval: _____ Recommend Denial: _____
(Signature of CAO Park Manager)

-
- Request for referral to Cultus Lake Park Board
 - Referral Fee \$100.00 Receipt Number: _____ Date Paid: _____
 - Considered by CLPB on: _____ Approved / Denied
-