

BE IT ENACTED by the Council of the Town of Wolfville under the authority of Section 314(2), of the Municipal Government Act, as amended:

Number and Short Title:

1. This Bylaw shall be known as Bylaw 79 and may be cited as "Encroachment Bylaw".

Definitions:

2. In this Bylaw:

- (a) "Encroachment" means a structure upon and or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice.

- (b) "Town" means the Town of Wolfville.

- (c) "Council" means Council of the Town of Wolfville.

- (d) "street" means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full right of way width;

- (e) "structure" includes any building, bridge, pedway, balcony, bay window, elevator, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, porch, portico, railing, retaining wall, step, storage tank, tunnel, vault, veranda, or any part thereof; but does not include awnings, signs, poles, pole lines, pole braces and anchors, aerial cables, manholes, conduits, pipes for gas or liquids, and associated apparatus for the provisions of services, including amplifiers, connection panels, transformers, valves, and other fittings and equipment.

Encroachments:

3. (a) Council may, by agreement, authorize an encroachment or the continuation of an encroachment by a structure upon a street for such period of time and such conditions as it deems appropriate where:

- (i) the encroachment does not significantly impede pedestrian or wheelchair traffic on a sidewalk or vehicular traffic on the travelled way of a street;

- (ii) the encroachment does not pose a traffic hazard having regard to sight lines or otherwise;
- (b) Council delegates and authorizes the Chief Administrative Officer to approve encroachments, and enter into agreements with the property owner for such encroachment. The agreement shall include:
- (i) an indemnity in favour of the Town, and in form satisfactory to the Chief Administrative Officer, for the defence and indemnification of any claims arising out of, or in relation to the encroachment;
 - (ii) an acknowledgement that if Council determines that the area encroached upon is required to construct structures or facilities, including roads and or sidewalks or to mitigate safety concerns, the Chief Administrative Officer shall provide written notice of termination of the agreement to the property owner 60 days prior to termination, including the reasons for termination and a notice to remove the encroachment. In the event of imminent danger or harm, no notice period is required.
 - (iii) other terms as the Chief Administrative Officer deems appropriate.
- (c) Any agreement authorizing an encroachment shall be registered at the Land Registration Office for Kings County and contain sufficient information with respect to the property to satisfy Land Registration Office requirements.
4. A fee of \$250.00 to cover the administrative costs of the Town handling the application for the encroachment agreement is payable by the land owner when applying for the encroachment agreement. After July 1, 2006 the fee will be set by Policy.

CERTIFICATE

I, BRIAN PORTER, Town Clerk of the Town of Wolfville do hereby certify that the Bylaw of which the foregoing is a true copy was duly passed at a duly called meeting of the Town Council of the Town of Wolfville held on the 21st day of November 2005.

**Town of Wolfville
Bylaws and Regulations**

**Encroachments Upon and Over a Street
Chapter 79
Page 3**

Notice of the said Bylaw passing was published in *THE ADVERTISER*, a newspaper circulating in the said Town on the 25th day of November 2005.

Given under the hand of the Town Clerk and the Corporate Seal of the Town of Wolfville this 25th day of November 2005.



BRIAN PORTER
Town Clerk

THIS ENCROACHMENT AGREEMENT dated the ___ day of _____
is made

BETWEEN:

hereinafter called the "PROPERTY OWNER"

OF THE FIRST PART

and

THE TOWN OF WOLFVILLE, a municipal body corporate
Hereinafter called the "TOWN"

OF THE SECOND PART

Whereas:

- (i) The Council has passed a Bylaw with respect to the encroachments of structures upon Town streets, and
- (ii) The Property Owner has requested approval by the Town for the encroachment to continue (or take place);
- (iii) The Council has delegated to and authorized the Chief Administrative Officer to authorize, where appropriate, such encroachments and to enter into agreements.

This agreement witnesses that the Parties for good and valuable consideration have agreed as follows:

1. In this agreement:

- (a) "Encroachment" means a structure upon and or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice.
- (b) "Town" means the Town of Wolfville.
- (c) "Council" means Council of the Town of Wolfville.
- (d) "Street" means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full right of way width.

(e) "Structure" includes any building, bridge, pedway, balcony, bay window, elevator, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, porch, portico, railing, retaining wall, step, storage tank, tunnel, vault, veranda, or any part thereof; but does not include awnings, signs, poles, pole lines, pole braces and anchors, aerial cables, manholes, conduits, pipes for gas or liquids, and associated apparatus for the provisions of services, including amplifiers, connection panels, transformers, valves, and other fittings and equipment.

2. The Town hereby permits the encroachment of the structure (or structures) as described in Schedule "A" attached, by the property owner upon the town street.

3. The Property Owner's property is located within the Town of Wolfville and described as follows:

PID:

Civic Number:

4. The Property Owner certifies that he is the registered owner of the property described in clause 3 of this agreement. The agreement shall terminate within 30 days of a change in ownership and shall not be assignable by the Property Owner, unless within that time the new property owner provides an indemnification in favour of the Town on those terms as set out in clause 6.

5. Notwithstanding Section 2 of this agreement, if at any time, Council determines that the area encroached upon is required to construct structures or facilities, including roads and or sidewalks or to mitigate safety concerns, the Chief Administrative Officer shall provide written notice of termination of the agreement to the property owner 60 days prior to termination, including the reasons for termination and a notice to remove the encroachment. In the event of imminent danger or harm, no notice period is required.

6. The Property Owner shall indemnify, release, defend and hold the Town of Wolfville, its officers, agents, employees and volunteers against any and all claims, demands, suits, losses, liabilities or expenses of any kind, including legal fees and administrative costs to the extent caused, arising out of or resulting in any way, or in part, from the negligent acts or omissions or wilful misconduct of the Property Owner, its officers, agents, employees, or contractors, in connection with the Property Owner's duties or obligations under this agreement, or the Property Owner's use of the Town's street, excluding any such liability caused by the sole active negligence or wilful misconduct by the Town. The Property Owner shall defend, indemnify, release and hold harmless the Town, its officers, agents, employees, and volunteers, from any loss, liability or damage

arising from any claim, action or proceeding seeking to attack, set aside, void or annul the Town's approval of the Property Owner's use of the Town's street pursuant to this agreement.

Signed, Sealed and Delivered
In the presence of:

Witness

Witness

Property Owner

Town Of Wolfville

Per : _____
Chief Administrative Officer