



Administrative Policy and Procedure City of Bonney Lake, Washington

SUBJECT: Encroachment Policy and Permitting Process		
	Policy No. 500.010	Pages: 2
Effective Date: January 31, 2007	Supercedes: NA	
Developed by: Joel Thompson/Don Morrison	Department Head Approval:	Mayor/City Administrator Approval:

1. PURPOSE. To protect City property and right-of-ways (ROW) from unauthorized encroachment, and to allow adjoining property owners temporary use of the City's ROW when desirable.

2. DEPARTMENTS AFFECTED

Planning and Community Development; Public Works

3. REFERENCES.

None

4. DEFINITIONS

4.1 An encroachment is any intrusion, irrespective of height or size, into a sidewalk, street, or other public right-of-way and includes, but is not limited to, fill material, retaining walls, rockeries, woody plants and trees either deliberately planted or growing from adjacent property, or any other material or structures. An encroachment is a passive use of or infringement on or over City property or right-of-way (ROW). Other examples of encroachments are a fence or building which was inadvertently been placed on City property; an awning or sign that overhangs a City sidewalk; or a clock which is on or overhangs a City right-of-way or sidewalk.

5. RESPONSIBILITIES.

Under the Direction of the Planning and Community Development Director, it is the responsibility of the Permit Center to administer the encroachment permit process subject to the review and recommendations of the Engineering Division. The Engineering Technician is assigned the primary responsibility for reviewing Encroachment Permits Applications.

6. STATEMENTS OF POLICY AND PROCEDURE

6.1 Encroachment Policy – Permit Required. It is the policy of the City that no

encroachment shall be permitted or allowed to exist on, over, or under City property or ROW without an Encroachment Permit being issued by the City.

As a general rule, encroachment permits will not be granted under the following circumstances: (1) the City has a planned project in the TIP or CIP to utilize the ROW in which the encroachment is proposed, (2) the encroachment would create an immediate sight distance problem at intersections, or (if a bush/tree) could grow into a sight distance problem, or other obstruction, (3) utility lines are under or near the proposal obstruction, and/or (4) the proposed encroachment is not compatible with the surrounding neighborhood. (5) the proposed encroachment would create a public nuisance, (6) the proposed encroachment would create a safety hazard to motorists, bicyclists, or pedestrians; (7) the proposed encroachment would obstruct maintenance of public roads, shoulders, and/or stormwater systems or otherwise increase the cost to maintain those City improvements; or (8) the proposed encroachment would be within five feet of a roadway surface.

Minor exceptions to the above requirements may be granted by the Director upon a finding that the proposed encroachment has little or no likelihood to create a hazard, impede City services or projects, or otherwise incur additional expense on behalf of the public. If any of the above stated circumstances are created after an encroachment is permitted, then the Applicant may be required to immediately remove the encroachment at the request of the City.

- 6.2 Encroachment Permit - Application.** All encroachment applications shall be made in writing on a form provided by the City (Attached). A drawing and address number will accompany the application that describes the proposed encroachment. No encroachment permit application shall be granted until the Applicant has completed the application, paid a permit fee of thirty-five dollars (\$35.00), complied with all conditions required by the City Engineer or designee, signed the indemnity agreement, and provided the City with evidence of the required insurance. In the event that the Applicant or Permittee fails to comply with any of the requirements of this Encroachment Policy or the conditions in the Encroachment Permit, then any encroachment, including that which may have been previously approved, shall be denied, revoked, or rescinded. In those events, the encroachment shall be declared to be a nuisance and/or trespass and shall be immediately removed from City property or ROW at the Permittee's sole expense. Permittee shall also be required to restore the City's property and/or ROW to its prior condition.
- 6.3 Indemnification.** The Applicant/Permittee shall covenant and agree to indemnify and defend the City from all claims, actions, or suits, for any loss, liability, injury, and damage to person or property, including attorney's fees, which may be asserted against the City because of the Permittee's activities, use, or occupancy of the City's property or ROW. The Permittee shall also provide evidence that he/she/it has obtained and maintains a policy of comprehensive general liability insurance for the minimum amount of \$500,000 per occurrence and in the aggregate, which shall provide protection and coverage for all injuries and damages caused by Permittee's activities, use, and/or occupancy of the City's property or ROW. This may be the Applicant's home owner's policy if it provides the necessary coverage.

The certificate of insurance, the application, and one copy of the application shall be filed with the City's Risk Manager before any Encroachment Permit is issued or any encroachment is placed or maintained on City property or ROW. By granting permission to use or occupy the City's property for the stated purpose, the City is only granting Permittee a mere license. Permittee shall be required to waive, release, and relinquish any and all claim of right, title, or interest in the City's property or ROW.

- 6.4 Expired Permits.** In the event that the Applicant's/Permittee's property is sold, conveyed, or transferred, or the encroachment is destroyed, in disrepair, or may otherwise be a hazard to the general public, then in any of those or similar events the Encroachment Permit shall be deemed to have expired, and the property owner must apply for a new Encroachment Permit before placing any other encroachment on City property or ROW.
- 6.5 Extent of Authority.** The City, in its sole and absolute discretion, may approve, deny, or set any limitations or conditions on any Encroachment Permit which may be issued, or may at any time alter, amend, modify, rescind, or revoke any permit or this Policy, all without recourse or remedy by the Applicant/ Permittee, or liability to the City.

7. ATTACHMENTS

Encroachment Application/Permit



APPLICATION FOR ENCROACHMENT

Name of Applicant: _____

Mailing Address: _____ Telephone: _____

Location of Encroachment: _____

(A scaled drawing or site plan of the proposed encroachment must be attached)

Street address of property where encroachment would be located, and Short Legal Description or Pierce County Parcel Number :

Use of Property: _____

Owner of Property (If different from applicant): _____

Insurance Carrier: _____

Expected Duration of Encroachment Request Including Dates: _____

Description of Encroachment: _____

Purpose of Encroachment: _____

Applicant covenants and agrees, in the event that an encroachment permit is issued, to indemnify, protect, defend, and save the City harmless from any and all claims, actions or suits for any loss, liability or damage that may be asserted or leveled against the property or the City by reason of Applicant's use or occupancy of the City's property, including any expenses, costs or attorney fees incurred in connection with any such claim, action or suit. In the event of any incident occurring on the property, resulting in any personal injury, including death, which in any manner whatsoever involves the permitted encroachment, Applicant agrees to notify the City within 48 hours of the happening of any said incident or occurrence.

Applicant covenants and agrees to purchase and maintain, during all periods for which an encroachment permit is applicable, a policy of general liability insurance in the amount of not less than \$500,000 per occurrence and in the aggregate which shall protect and save harmless the City, its officers and employees from any and all manner of claims, suits or actions for injuries, death, losses or damages arising out of, occurring or resulting to any person or property as a result of the requested encroachment.

The certificate and policy of insurance shall be endorsed to include that the City of Bonney Lake, its officers and employees are additional insureds. This coverage is primary to the City and not contributing or pro rata with any other insurance or similar protection (e.g. Risk Management Association) which is or may be available

to or carried by the City.

The certificate and/or policy of insurance shall provide that the City shall be given 30 days written notice should the policy be cancelled or amended before its expiration. The Applicant covenants and agrees to strictly comply with all terms and conditions of the City's Encroachment Policy and any encroachment permit which may be issued as a result of this application. Applicant further understands and agrees that the City in its sole and absolute discretion may approve, deny or set any limitations on any encroachment permit which may be issued, or may at any time alter or amend, modify, rescind or revoke any permit for the use of the City's property by the Applicant, all without recourse or remedy by the Applicant, or liability of the City. Applicant further understands and agrees that if the City has need to expand use of the ROW such that the permitted encroachment be removed, on the sole discretion of the City, applicant will remove the encroachment within 30 days, without recourse or remedy as the applicant.

By granting permission to use or occupy the City's property for the stated purpose, the City is only granting Permittee a mere license. Permittee shall waive, release and relinquish any and all claim of right, title or interest in the City's property or ROW. In the event that the property's use is changed or the property is sold, transferred or otherwise conveyed by the Applicant or Owner, the encroachment permit shall expire. In the event that the Applicant fails to comply with any of the conditions or requirements set forth above or in the City's Encroachment Policy, or fails to maintain the encroachment in good condition and repair, in compliance with all applicable state law and City ordinances, including building codes and regulations, then this encroachment permit shall automatically expire and Applicant shall immediately remove the encroachment.

The undersigned states that he/she has full authority to execute this application on behalf of the owner and acknowledge receipt of a copy of the City's Encroachment Policy and agrees to comply with all terms and conditions set forth therein.

Applicant Name (Print)

Date

Applicant Signature

Note: There is a \$35.00 nonrefundable permit application fee which must be paid at time of application.

Action by Building and Planning Division

The encroachment applicant is **DENIED / APPROVED** subject to the following conditions:

Date

Authorized City Representative

Copies to Applicant, City Clerk (Risk Manager), Encroachment Permit File