

COMOX HIGHWAY USE BYLAW 1920

A bylaw to provide for the authorization of non-traffic uses of highways

WHEREAS the *Community Charter* prohibits every person from excavating in, causing a nuisance on, obstructing, fouling or damaging any part of a highway except as permitted by bylaw; and

WHEREAS a Council may, under the *Community Charter*, permit an encroachment in respect of a highway that is vested in the municipality;

NOW THEREFORE the Council of the Town of Comox, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as “Comox Highway Use Bylaw 1920”.
2. In this bylaw,
 - a. “Boulevard” means that portion of a highway that lies between the abutting property line and the back of the nearest curb or, in the absence of a curb, the nearest edge of the portion of the highway that is improved for vehicular traffic, and includes any sidewalk, cycle path, ditch or drainage swale located within such portion of the highway.
 - b. “Bylaw Enforcement Officer” means an employee of the Town who has been designated as a bylaw enforcement officer pursuant to s. 36 of the *Police Act*.
 - c. “Council” means the Council of the Town of Comox.
 - d. “Highway” includes any statutory right of way granted to the Town for access or utility purposes.
 - e. “Interfere” includes, in relation to existing underground works, being located within the minimum clearance specified in the Town’s works and services standards enacted under s. 506 of the *Local Government Act*.
 - f. “Letter of Credit” means a clean, unconditional, irrevocable and automatically renewing letter of credit drawn on a Canadian chartered bank or credit union, upon which demand may be made at a branch of the bank or credit union in the Town of Comox or the City of Courtenay.
 - g. “Multi-family Residential Zone” means a zone listed under the heading “Multi-Family Residential Zones” in s. 4.1 of Comox Zoning Bylaw 1850.
 - h. “Municipal Engineer” means the person appointed to the position of Director of Operations by the Council.
 - i. “Residential Zone” means a zone listed under the heading “Residential Zones” in s. 4.1 of Comox Zoning Bylaw 1850.
 - j. “Works and Services Bylaw” means any bylaw adopted by the Council under s. 506 of the *Local Government Act*.

3. This bylaw does not apply to any of the following:
 - a. the construction or maintenance on any highway vested in the Town of any existing or proposed improvement located in an easement area under and in accordance with the terms of an easement granted by the Town pursuant to s. 35(11) of the *Community Charter* and registered in the Land Title Office;
 - b. the construction, installation or maintenance by the Town of any highway improvement of any nature, including without limitation any pavement or other surfacing, boulevard or boulevard landscaping, street lighting, sign or traffic control device, water supply infrastructure, drainage infrastructure, sewage collection infrastructure or ducting and vaults for underground wiring;
 - c. the B.C. Hydro and Power Authority, any utility that is subject to the jurisdiction of the B.C. Utilities Commission, or any telecommunications provider that is regulated under the *Telecommunications Act* (Canada); and
 - d. on the portion of any highway other than
 - i. Dakota Place as depicted in Schedule A, and
 - ii. any highway within North East Comox as designated in Schedule B, between the outer edge of the sidewalk and the abutting property line, or where no sidewalk exists between the back of the curb and the abutting property line, gravel ground cover or landscaping consisting of grass, vegetative ground cover or shrubs not exceeding a height at maturity of 0.5 m, in each case installed and maintained without alteration of grade.
4. No person shall, without obtaining a permit under this bylaw, excavate in, construct or maintain any improvement upon any highway vested in the Town, and for this purpose "improvement" includes any driveway crossing of a boulevard, sidewalk, ditch or swale, any encroachment of a building or structure, any ground cover, vegetation including grass, or landscaping, and any works or services required to be provided on a highway under any works and services bylaw.
5. Every person making an application for a permit pursuant to this bylaw shall pay the permit fee set out in Schedule C and provide the information required by the application form prescribed by the Municipal Engineer.
6. No permit fee is payable under this bylaw in respect of a permit authorizing the construction or installation of works and services required to be provided on a highway under any works and services bylaw.
7. Every person making an application for a permit authorizing a driveway crossing of a boulevard shall provide a damage deposit in the amount of \$1000, which shall be returned to the permit holder if all damage to the highway that is caused by the

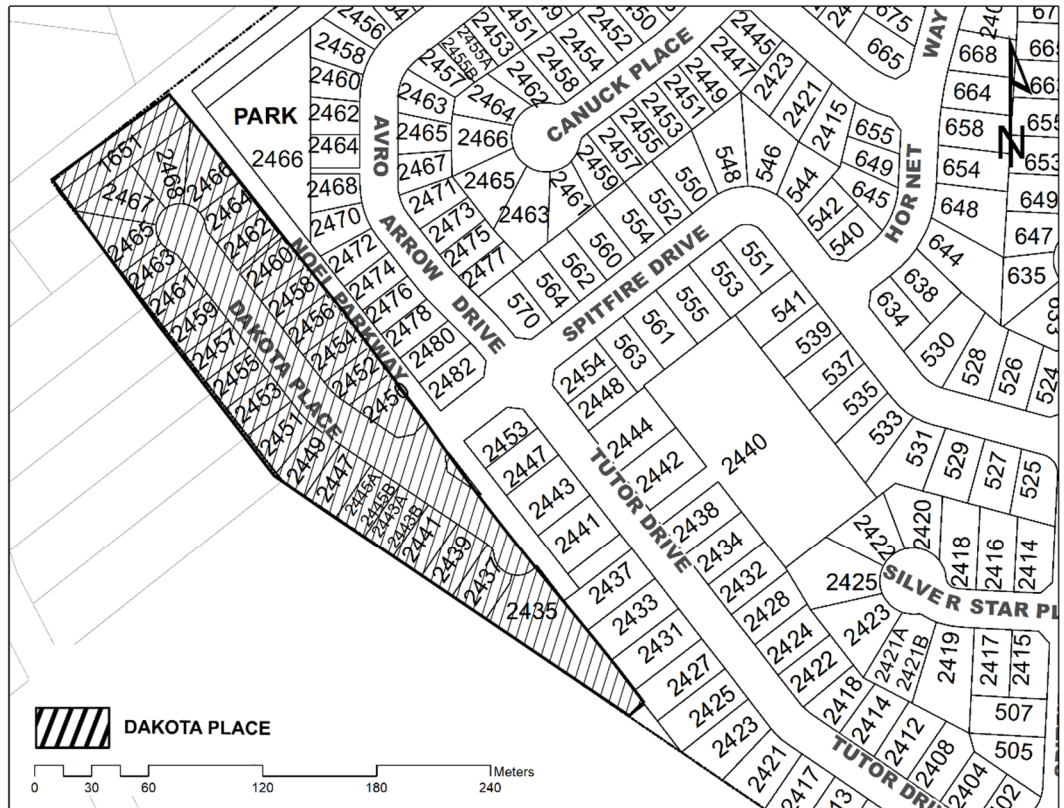
installation of the crossing is repaired to the Town's satisfaction by the permit holder, and may be retained by the Town to pay for repair of unrepaired damage. Nothing in this bylaw or any permit issued pursuant to the bylaw relieves the permit holder from their obligation to pay the cost of repairing any damage not covered by their damage deposit.

8. The Municipal Engineer may, for the purposes of this bylaw:
 - a. prescribe the form of permit applications and permits;
 - b. issue permits pursuant to this bylaw;
 - c. require, in the case of proposed improvements of a permanent nature such as, but not limited to, retaining walls and buildings, that the owner of the proposed improvements enter into an easement agreement with the Town in respect of the improvements in lieu of obtaining a permit under this bylaw;
 - d. impose permit terms and conditions, including without limitation requiring prior approval by the Municipal Engineer of plans and specifications for the work; maintaining the safety of all forms of traffic and the cleanliness of the highway during the progress of the work; notifying the Municipal Engineer of any existing infrastructure or boulevard tree roots encountered in the highway during the progress of the work, with which the work would interfere; restoring the highway and any pre-existing servicing infrastructure following completion of the work; and providing to the Town as-constructed drawings of any improvements that have been constructed on a highway;
 - e. require the holder of a permit to designate in writing a contractor holding a Town of Comox business licence, to carry out the work authorized by the permit, and in such cases may require that the contractor provide to the Town prior to commencing the work evidence of third party liability insurance in respect of any claims that may arise from the performance of the work authorized by the permit, which insurance identifies the Town as an additional insured;
 - f. impose in an encroachment permit conditions dealing with the removal of the encroachment at the permit holder's expense if the encroachment area is required by the Town for highway purposes;
 - g. stipulate in any encroachment permit an amount of security that is required to be provided to the Town to secure the permit holder's compliance with the terms of the permit, which shall be 125% of the full amount of the estimate of the cost of the work to be undertaken on a highway, prepared in writing by the applicant's professional engineer or architect and approved by the Municipal Engineer, but in no event less than \$100 for walkways and \$500 for all other encroachments, and may be in the form of cash or a Letter of Credit; and
 - h. revoke or modify permits issued pursuant to this bylaw if the permit holder fails to comply with the terms and conditions of the permit.

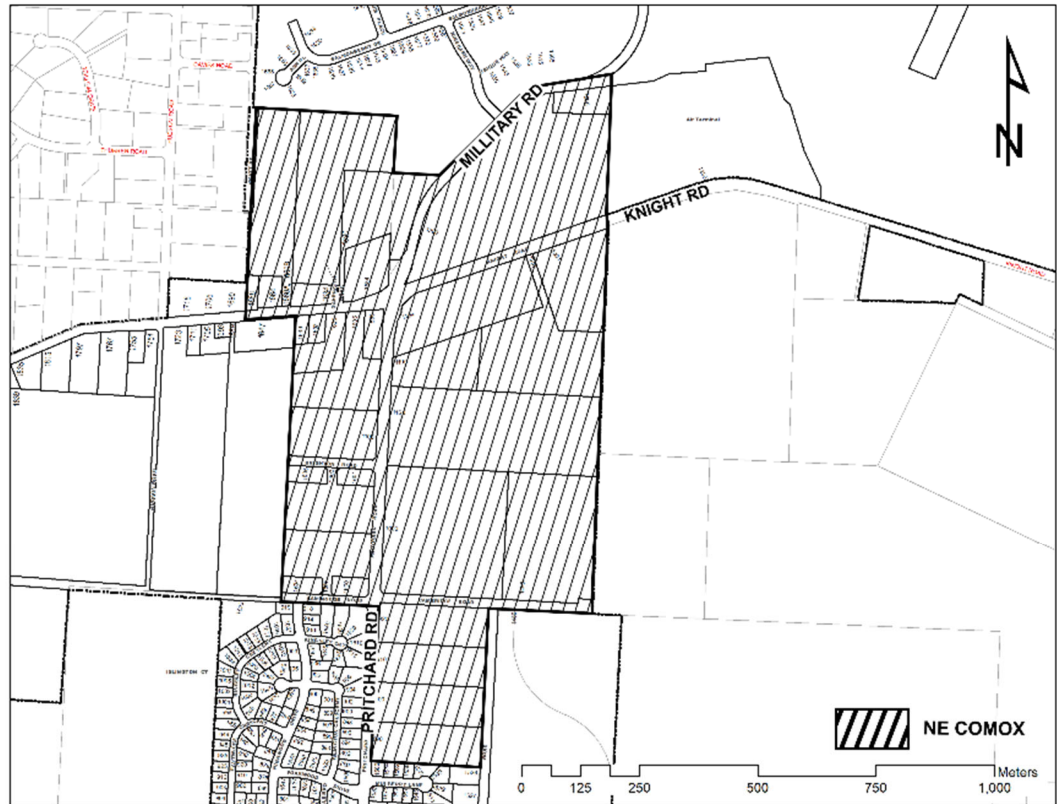
9. A permit issued pursuant to this bylaw must contain an indemnification of the Town executed by the holder of the permit, by which the holder of the permit agrees, in consideration of being permitted to encroach on a highway, to indemnify and save the Town harmless in respect of any claim made against the Town by any person for damages of any kind arising from the performance or existence of the work authorized by the permit.
10. A permit shall not be issued for a driveway crossing of a boulevard, including an alteration of an existing crossing, in any of the following circumstances:
 - a. in multi-family residential zones the crossing would be wider at its widest point than 6.0 m in the case of two-way travel and 3.6 m for one-way travel unless otherwise required for firefighting vehicle access by the British Columbia Building Code;
 - b. in residential zones the crossing would be wider at its widest point than 5.5 m unless otherwise required for firefighting vehicle access by the British Columbia Building Code;
 - c. in zones other than residential and multi-family residential the crossing would be wider at its widest point than 6.0 m, provided that the Municipal Engineer may permit an alternative driveway arrangement including a non-driveway drop to accommodate vehicle volume, turning radius or type;
 - d. the driveway would provide access to an arterial highway designated as such in any works and services bylaw, if the parcel has frontage on another highway that is not an arterial highway, a private access easement or a strata property access route;
 - e. the permit is sought in relation to an alteration to an existing driveway in a residential zone that would cross a barrier curb and gutter; or
 - f. any part of the driveway would be within 6 metres of the point of intersection of lot lines of a corner lot, or the lot lines produced to their point of intersection.
11. A driveway crossing permit shall not be issued in respect of a lot in a residential zone if the driveway would provide access to a lot that otherwise has driveway access to a highway.
12. A driveway crossing permit shall not be issued in respect of a lot in a multi-family residential zone if the driveway would provide access to a lot that otherwise has a two-way driveway access to a highway or two one-way driveway accesses to a highway, provided that the Municipal Engineer may issue a permit in those circumstances to authorize one or more driveway accesses each providing access to at least two dwelling units, if multiple driveway accesses will not, in the Municipal Engineer's opinion, create a traffic safety hazard on any highway.

13. In the case of a lot not described in either of the preceding sections, driveway access is restricted to one ingress lane and one egress lane per abutting street.
14. An encroachment permit shall not be issued for any of the following:
 - a. an encroachment into a designated emergency access route;
 - b. an encroachment that would obstruct, damage, expose, impede the use of or restrict access to any utility infrastructure;
 - c. a fence, parking or loading space, hedge or tree including the roots thereof;
 - d. a building or structure including any footing, shed, garage, garbage enclosure, canopy or sign;
 - e. an encroachment that obstructs sightlines at a highway intersection or would otherwise constitute a hazard;
 - f. a retaining wall, unless the lawful development of a parcel would be impossible without the encroachment of a retaining wall onto public property; or
 - g. an encroachment of any kind on Dakota Place as depicted in Schedule A or any highway within North East Comox as designated in Schedule B.
15. The Municipal Engineer may, having given such notice to the holder of an encroachment permit as is reasonable in the circumstances, which may be oral notice in the case of an emergency, remedy any failure of the permit holder to comply with any term or condition of a permit, and apply the permit security to the cost of doing so.
16. If the Municipal Engineer uses permit security in accordance with the preceding section, the permit holder shall reimburse the Town for any expenditure that exceeds the amount of the security and shall replenish the security to the original amount.
17. Upon the completion of the work for which a permit was issued pursuant to this bylaw, or the removal of an encroachment for which a permit was issued, the Municipal Engineer shall refund to the person who provided the security any unused amount of the security.
18. The Municipal Engineer may revoke or modify a permit issued pursuant to this bylaw if, during the course of the work authorized by the permit, the permit holder encounters existing underground works with which the permit holder's works would interfere, or boulevard tree roots that would in the Municipal Engineer's opinion be damaged by the permit holder's work to a degree that would impair the health or survival of the tree.
19. No person shall, being the holder of a permit issued pursuant to this bylaw, fail to comply with any term or condition set out in the permit.

**SCHEDULE A
DAKOTA PLACE**



**SCHEDULE B
NORTHEAST COMOX**



**SCHEDULE C
PERMIT FEES**

Permit Type	Fee
Driveway crossing of boulevard	\$250
Minor works within highway	\$250
Other works within highway	\$1000
Highway encroachment – wheelchair ramp	\$50
Highway encroachment – pedestrian walkway, no portion of which exceeds 50.0 mm in height from existing soil grade	\$50
Encroachments authorized by easement	\$2500

In this table, “minor works” means storm sewer service connection of 150mm diameter, sanitary sewer service connection of 100 mm diameter, water meter service connection of 25mm diameter and 450mm diameter culverts.