

THE CORPORATION OF THE CITY OF NANAIMO.

BY-LAW No. 283.

Whereas, it is provided by the Municipal Act, that every Municipal Council may make By.laws for permitting areas, cellars, or openings under sidewalks and streets in the Municipality, and for permitting and regulating the use of the same, and of any such areas, cellars, or openings already constructed, and for making and collecting an annual charge for the use of such areas, cellars or openings.

And Whereas it is deemed expedient to provide for the use of areas, cellars and openings under the sidewalks in this City, and for the imposing of an annual charge for the use of such areas, cellars, and openings.

Be it therefore enacted by the Municipal Council of the Corporation of the City of Nanaimo, as follows:-

1. Any person desiring to excavate for, construct, or use any area, cellar, opening or coal chute in or under any sidewalk or street appurtenant to his property in the City of Nanaimo, or desiring to be allowed the use of any space, area, cellar opening, or coal chute heretofore excavated or constructed in or under any sidewalk or street appurtenant to his property in the City, which has been constructed without permission obtained and an agreement executed as hereinafter required, shall apply to the City Engineer for permission to have the same excavated, constructed or used, or for permission to be allowed to continue the use of such space, area, cellar opening or coal chute if ~~it has~~ been heretofore constructed, and shall submit a plan thereof to the said Engineer; and upon the Engineer being satisfied of the safety and advisability of such area, cellar opening or coal chute, he shall recommend to the Streets committee that such permission be granted; and the Streets Committee if they approve of the Engineer's recommendation shall so report to the Council. But no person shall construct or use any area, cellar, opening or coal chute in or under any sidewalk or street in the City,

nor continue the use of any such area, cellar, opening or coal chute heretofore constructed until such person shall have received permission from the Council so to do, which permission may be revoked by the Council, whenever it shall be proved to the satisfaction of the Council that the continued use of such area, cellar, opening, or coal chute is prejudicial to the interests of the community, or is dangerous to life, limb or property. Every such application shall be in writing in the form set out in Schedule A to this By-law, as nearly as may be, and all information, particulars and details mentioned in the said Schedule "A" shall in such application be fully filled in, and such application shall be signed by the owner of the premises opposite which the area, cellar, opening or coal chute is, or is proposed to be constructed or used.

2. If the Council gives permission to any person to construct or use a space, area, cellar, opening or coal chute, or to continue the use of any space, area, cellar, opening or coal chute heretofore constructed, the City Engineer or some other person appointed by the Council shall see that the same is excavated and constructed in accordance with the permission of the Council, and in such a manner as to render the sidewalk and street safe for the use of the public after such construction; and thereafter such space, area, cellar, opening or coal chute, and the prism lights or other covering thereof, shall be kept in good and sufficient repair by the person owning the premises appurtenant to which the said space, area, cellar, opening or coal chute has been constructed.

3. Before any person to whom permission has been granted by the Council, as provided in the last preceding Section, shall proceed with the excavation or construction of such space, area, cellar, opening or coal chute, or shall continue the use of any such area, cellar, opening or coal chute heretofore constructed, he shall enter into an agreement with the City in the form contained in Schedule B to this By-law, and such agreement shall be executed by the owner of the premises appurtenant to which such space, area, cellar, opening or

coal chute is; and such owner shall thereupon pay to the City the sum of Five Dollars (\$5.00) and whatever registration fees may be necessary to register the said agreement in the Land Registry Office.

4. The annual charge of three (3) cents per superficial square foot of surface area included in such space, area, cellar, opening (other than coal chutes) shall be and is hereby made and imposed for the privilege and use of every such space, area, cellar or opening in or under any sidewalk or street in the City, and shall be paid in advance to the City by the owner of the premises appurtenant to which such space, area, cellar or opening is, and payment thereof may be enforced in like manner as municipal taxes.

5. An annual charge of fifty cents (50¢) shall be and is hereby made and imposed for each coal chute in or under any sidewalk or street, and shall be paid in advance to the City by the owner of the premises appurtenant to which such coal chute is, and payment may be enforced in like manner as municipal taxes.

6. The City Engineer shall measure each space, area, cellar or opening in or under the sidewalks or streets in the City (other than coal chutes) and compute the annual charge to be made against the owner of the premises appurtenant to which such space, area, cellar or opening exists and shall make a report thereof to the City Comptroller on or before the first day of May in each year, and the City Engineer shall also ascertain what coal chutes exist in the City, and shall include in the said report a list of the property appurtenant to which they exist. The appropriate charges for each space, area, cellar, opening and coal chute, with the date reported to him by the City Engineer as hereby provided shall be entered in a book to be kept for that purpose by the Comptroller.

7. All the spaces, areas, cellars, openings and coal chutes which shall be constructed under this By-law as well as those heretofore constructed, may continue in use until permission therefor is revoked by the Council, and until such permission is so revoked, the owners

of the property appurtenant to which the same exists shall keep all such spaces, areas, cellars, openings and coal chutes and the prism lights or other coverings thereof in good and sufficient repair; and it shall be the duty of the City Engineer to report to the Council all such spaces, areas, cellars, openings or coal chutes which are out of repair.

8. In the event of the revocation by the Council of its permission to any person to construct or use any such space, area, cellar, opening or coal chute, the City Engineer shall serve notice on the owner of the premises appurtenant to which such space, area, cellar, opening or coal chute is, and within one month thereafter such owner shall fill up any excavation made for such space, area, cellar, opening or coal chute, and shall place the sidewalk or street under which the same has been constructed, in as good condition as it was before such space, area, cellar, opening or coal chute was excavated or constructed.

In the event of the revocation by the Council as aforesaid, any applicant who heretofore was permitted to construct any space, area, cellar, opening or coal chute in which the said applicant complied with all the conditions laid down under this By-law, he shall be recompensed to the full value of any work performed by himself in the construction of the said space, area, cellar, opening or coal chute, and he shall be refunded the cost of all work incurred by such permission granted under this By-law.

9. In the event of any such permission being revoked by the Council, the City Treasurer shall refund to any owner who has paid in advance the annual charge for any such space, area, cellar, opening or coal chute, an amount proportionate to the unexpired portion of the then current year covered by such payment.

10. Every person so excavating, constructing or using any such space, area, cellar, opening or coal chute under the provisions of this By-law, shall indemnify the City against any and every claim, loss or damage which may be occasioned by reason of the construction, existence or use thereof; and the amount of any loss or damage occasioned

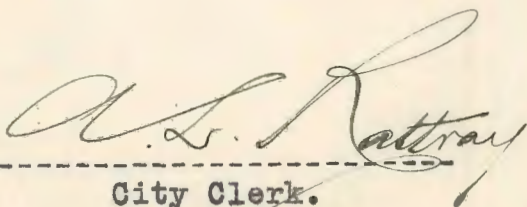
to the City thereby shall be a first lien or charge on the lands abutting such space, area, cellar, opening or coal chute.

11. Any person guilty of an infraction of this By-law shall, upon conviction thereof before the Police Magistrate, or any two Justices of the Peace having jurisdiction in the City of Nanaimo, on the oath or affirmation of any credible witness, forfeit and pay at the discretion of said Police Magistrate or Justices of the Peace convicting, a fine or penalty not exceeding the sum of One Hundred (\$100.00) dollars and costs for each offence, and in default of payment thereof forthwith it shall be lawful for such Police Magistrate or Justices of the Peace convicting as aforesaid, to issue a warrant under his or their hand and seal to levy the said fine or penalty and costs, or costs only, by distress and sale of the offender's goods and chattels; and in case of no sufficient distress found to satisfy the said fine or penalty, it shall, and may be lawful for the Police Magistrate or Justices of the Peace convicting as aforesaid to commit the offender to the common gaol, or any lock-up house in the City of Nanaimo for any period not exceeding two months (with or without hard labor) unless the said fine or penalty be sooner paid.

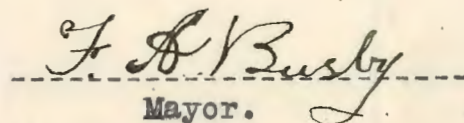
12. This By-law may be cited as the Area By-law No. 283, 1916.

Passed in open Council this 28th. day of February, 1916.

Reconsidered and finally passed this 6th. day of March, 1916.



City Clerk.



Mayor.



SCHEDULE "A"

CORPORATION OF THE CITY OF NANAIMO.

APPLICATION FOR AREA AGREEMENT.

..... the undersigned, hereby make application to the City of Nanaimo for permission to excavate and construct an area under the sidewalk adjoining the property hereinafter mentioned, of the number of superficial feet hereinafter mentioned, and according to the plans in duplicate hereto attached, and hereby declare that the information, particulars and details hereunder set out are absolutely true and correct, and agree to pay the rental and fees and expenses for and in connection therewith required by the City, and that such permission shall be of no force and effect unless such information, particulars and details are true and correct, and unless and until an agreement in form approved by the City Engineer (which form acknowledge to have seen and examined) has been first executed by the registered owner of, and all others interested, by Agreement for Sale or otherwise, in said property, and duly registered in the Court House at Nanaimo.

This application, and any permission granted hereunder shall be subject to all the terms of said Agreement and all By-laws, Rules and Regulations of the City of Nanaimo and the Council thereof, or any committee of such Council.

Applicant

Address

INFORMATION, PARTICULARS AND DETAILS.

Property- Lot No. Block No. D. L. No. Side Street, in the City of Nanaimo Number of superficial square feet required.

Registered Owners-- Holders under Agreement for Sale Certificate of Title No. Names of other Holders of Charges and encumbrances--- Dated this day of A. D. 19

Name

Address

Name

Address

Name

Address

Permission subject to above provisions, granted by City
Engineer day of 19 , and con-
firmed by City Council on day of
19 ,

.....
City Engineer.

NOTE- Full Christian and surnames as appearing in Land Registry
Office must be given.

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SCHEDULE "B"

MEMORANDUM OF AGREEMENT

Made and entered into this _____ day of _____
in the year of our Lord one thousand nine hundred and _____

BETWEEN

of the City of Nanaimo, in the Province of British Columbia, hereinafter called the said owner, of the first part,

AND

THE CITY OF NANAIMO, hereinafter called the said City, of the second part,

Whereas the said _____ the owner of Lot _____ in the City of Nanaimo, and he requested the said City to grant permission to construct a certain cavity under the sidewalk in front of the above described lot, and which request the said City has agreed to grant subject to the terms and conditions hereinafter set forth.

Now this Agreement witnesseth that in consideration of the premises and of the covenants contained therein, by the said Owner to be performed and observed; the said City doth (so far as it legally can, but not otherwise) grant to the said Owner, permission to excavate a cavity under the sidewalk in front of the above mentioned lot and premises, the said cavity being situated on the _____ side of _____ street, in the City of Nanaimo and having a superficial area of _____ square feet, and to extend in width for the full space of the sidewalk, less the thickness of the retaining wall needed for proper support. The top of such wall shall not be less than 12 inches in thickness, the whole of the said works (hereinafter referred to in this Agreement and described as the said works) to be constructed in accordance with the approved plan and to be subject to the approval of the City Engineer.

The said works shall be made with due regard to the public safety, and under the supervision and to the satisfaction of the City Engineer.

The said owner covenant that _____ will pay to the said City the fee of Five Dollars (\$5.00) upon the execution of this agreement and also for the permission hereby granted the annual sum of \$ _____ and the registration fees, _____ the said registration fees and the first of said annual payments and the said fee of \$5.00 to be payable upon the execution of this agreement, and the ensuing sum of \$ _____ to be paid on the first day of _____ in each and every year during the continuance of this agreement.

And the said owner covenant with the said City that _____ will indemnify and save harmless the said City from all loss, costs and damages, and from all suits and demands which may arise by reason of the construction or maintenance of such cavity as hereinbefore described or arising therefrom in any manner whatsoever, or from the permission hereby granted.

The said owner further covenant that in the event of any action being brought by any person, persons or corporation, to recover damages arising from the construction or maintenance of the said cavity and works as hereinbefore described, or arising either directly or indirectly therefrom, or as a consequence of the execution of this agreement, then the said City shall have a remedy over against the said owner _____, and may recover from said owner _____ all costs, damages and expenses to which the said City may be put by reason of such action, and may enforce payment of the same by the said Owner.

And the said owner do hereby charge the property hereinbefore described in favor of the said City for the payment of all sums which may at any time hereafter be payable in respect of damages between any persons arising from the construction or maintenance of the said cavity and workā or from permission hereby granted.

And the said City, its agents or servants shall have the right at any and at all times of entering into and upon the premises of the owner for the purpose of constructing, maintaining or inspecting any corporation works running underneath the sidewalk or in the vicinity of the said property.

And the said owner covenant with the said City that will at any time upon receiving one (1) month's notice in writing, fill in the said excavation made by underneath the said sidewalk, and remove the said works, and will restore the said sidewalk to its original condition, and that in the event of not doing so within the time specified in said notice, will pay all costs, charges and expenses to which the said City may be put by reason of such filling in as aforesaid.

The said owner also agree that in the event of any alteration or change being rendered necessary by the said works to any meter or water service under that portion of the sidewalk in front of the hereinbefore described property, that the said owner will reimburse the said City for whatever sums may be incurred by the said city in making alterations.

And the said owner agree that the covenants herein contained shall be covenants running with the land hereinbefore described.

This agreement shall ensure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered)
in the presence of (