

COMPREHENSIVE ENCROACHMENT POLICY & BY-LAW FOR THE CITY OF VAUGHAN

(Referred from the Council meeting of April 25, 2005)

Council, at its meeting of April 25, 2005, adopted the following:

That this matter be referred to the Committee of the Whole (Working Session) meeting of May 10, 2005.

Report of the Commissioner of Engineering and Public Works dated April 12, 2005

Recommendation

The Commissioner of Engineering and Public Works in consultation with the Commissioner of Community Services, Commissioner of Planning, Commissioner of Legal & Administrative Services and the Director of Corporate Communications recommends:

1. That the "Encroachment Policy" and "Application for Encroachment" be approved and that the "Encroachment By-law" be enacted;
2. That the proposed Communication Strategy and development & distribution of the Encroachment Information Brochure pending the source of funding be approved;
3. That staff enforcement of the "Encroachment By-law" be delayed until July 1, 2005 to allow for the dissemination of the Communication Strategy into the community;
4. That the necessary fees and charges be incorporated into the "Fees and Charges By-law" 396-2002, as amended; and
5. That the issue regarding grass cutting on adjacent public boulevard, which cannot be carried under the Encroachment By-law/Policy, be addressed through a future report to the Committee of the Whole by the Parks Department.

Purpose

The purpose of this report is to seek Council approval for a new comprehensive Encroachment By-law in response to the Committee of the Whole (Working Session) direction to develop a new Encroachment By-law and the administration thereof including a corporate communication strategy.

Background - Analysis and Options

At the Committee of the Whole (Working Session) of January 25, 2005, Report No. 6, Council recommended:

"That staff provide a report to a Committee of the Whole (Working Session) in March 2005 regarding a new comprehensive Encroachment By-law and the administration thereof, addressing those issues identified by Committee and including a communication strategy."

In the Fall of 2003, staff was directed to review and recommend an Encroachment Policy governing the permitted uses of the City's road allowances and easements to provide a consistent procedure by the City. The existing Encroachment Policy adopted by Council on July 4, 1994 deals with open space and parkland.

Several GTA Municipalities were contacted regarding the existence and use of municipal Encroachment policies and by-laws. During this review, Council requested another report dealing with alternative options to address alterations to roadside ditches by homeowners in Old Maple, which in essence is an encroachment issue and hence was incorporated into the original January 25, 2005 presentation. Based on this presentation it was recommended that the City develop a communication strategy along with a new comprehensive Encroachment by-law covering **all** City owned “public lands” having regard to the experience of other municipalities, since it was recognized that Encroachment by its very nature is a multi-departmental issue and it is not confined exclusively to one City Department, Division or Branch.

A comprehensive Encroachment By-law and Policy that includes a cost recovery provision will ensure that there is a uniform procedure throughout for City owned public lands to deal consistently with any encroachments such as the reinstatement of ditches or the removal of a garden plot in a Park.

The Encroachment Policy has been developed as a companion document to the Encroachment By-law to provide additional background information. The Encroachment Policy suggests that the Department(s) having jurisdiction, in conjunction with Enforcement Services, would be responsible for encroachment matters as per the flow chart in Appendix A. A possible encroachment shall be identified as not applicable, unauthorized – as no City approval has been granted which shall require removal, or authorized – as an Encroachment Permit or Encroachment Agreement is currently in effect or required.

Where conditions warrant, either an Encroachment Permit for a ‘simple encroachment’, as determined by the City and administered by the Clerk’s Department, or an Encroachment Agreement for a ‘complex encroachment’, as determined by the City and administered by the Real Estate Division may be approved. In the case where the City cannot determine the date or person(s) responsible for the encroachment, or where the City cannot resolve a dispute with an owner, or when any other need arises the proposed ‘new’ Encroachment Committee may meet to resolve the concern, comprised of staff members from Engineering, Public Works, Legal, Parks, Planning and Buildings.

An Application for Encroachment has been created to facilitate the administration and investigation of encroachments. The cost of the non-refundable Application For Encroachment is set at \$100.00 plus G.S.T. and other expenses, which is in keeping with other City applications fees. In terms of enforcement, in the case where an owner refuses to remove our unauthorized encroachment within a specified time and the City hires an outside contractor to restore the area, the invoice to the owner will be at cost, plus a 15% administration charge, plus any other additional expenses such as a Departmental inspection costs, at \$200 per visit.

Finally, a Communication Strategy has been developed to inform and educate all property owners and staff, of the Encroachment By-law, thus promoting Council’s commitment to community safety and the protection of public lands from unauthorized use by abutting private property owners. The primary means to deliver this message shall be through the development and distribution of an Encroachment Information Brochure, which will require funding not included in the approved 2005 Budget. This brochure will be available at all City owned publicly accessible facilities and may be inserted within the City’s water billings from time to time as well as being distributed to all new Vaughan residences once Council finalizes the proposed new “Homeowner’s Welcoming Package”. In addition, this information and Encroachment By-law will be available on the City’s web site and included in the Vaughan Community Information Guide along with being posted on a seasonal basis or as required on the City Page of the local community newspapers and other communication outlets.

Relationship to Vaughan Vision 2007

Vaughan Vision goals 1.1, Improve Community safety through design prevention, enforcement and education and 4.4, Ensure City wide protections of the environment are applicable.

This report is consistent with the priorities previously set by Council; however, a review of the necessary resources will need to be undertaken.

Conclusion

Staff recommends that Council enact the Encroachment By-law and approve the Encroachment Policy, attached Application and Communication Strategy which includes the development of a Brochure and that this information is disseminated throughout the City prior to the commencement of staff enforcement on July 1, 2005.

Attachments

1. DRAFT "Encroachment Policy"
2. DRAFT "Encroachment By-law"
3. DRAFT "Application for Encroachment"
4. DRAFT Communication Strategy and "Encroachment Brochure"

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Encroachment Policy
April 12, 2005

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POLICY STATEMENT:	6
PURPOSE:	6
COMMUNICATION STRATEGY:	6
DEFINITIONS:	6
RELATED POLICIES AND PRACTICES/ BYLAWS:	8
ENCROACHMENTS PROHIBITED AND EXEMPTIONS:.....	8
IDENTIFICATION:	9
ADMINISTRATION OF ENCROACHMENTS:	9
a) <i>Removal of Existing Encroachments:</i>	9
b) <i>Authorization of Existing or New Encroachments:</i>	10
i) Encroachment Permits for Simple Encroachments - License of Occupation	10
ii) Encroachment Agreement for Complex Encroachments - Leases	11
iii) Sale of Land – in limited cases	12
DEPARTMENTAL COMMENTS:.....	13
a) <i>Parks Department Comments</i>	13
b) <i>Engineering & Public Works Departments Comments</i>	14
i) Open Spaces/ Parklands/ Woodlands/ Storm Water Management	14
ii) Road Allowances or Sewer, Water and Road Easements	14
c) <i>T.R.C.A. Comments</i>	15
SUMMARY	16
a) <i>Communication Strategy</i>	16
b) <i>Illegal/ existing Encroachments</i>	16
c) <i>Request for Encroachments</i>	17
ATTACHMENTS:	18
CONTACT:	18
APPENDIX A	19
<i>Preliminary Encroachment Investigation Flow Chart:</i>	19
APPENDIX B	20

POLICY STATEMENT:

It is the general policy of the City of Vaughan that all unauthorized encroachments on Public Lands or easements shall be removed and any incurred expenses recovered from the responsible owner. Where conditions warrant an Encroachment Permit or Encroachment Agreement may be approved and in very special cases, the City may also consider the sale of Public Land. To mitigate the occurrence of encroachment onto Public Land a Corporate communication strategy shall be adopted to inform and educate the public. In so doing the City retains its obligation to preserving Public Lands and easements by preserving environmental, operational, safety and Departmental concerns.

PURPOSE:

This policy outlines definitions, a communication strategy, related policies/ by-laws, exemptions and enforcement along with a procedure to (a) identify and investigate encroachments, (b) administer encroachments by removal or authorization, and (c) prepare Encroachment Permits or Encroachment Agreements, where appropriate. The policy shall also be read, when required, as a companion to the by-law to provide additional background information.

This policy is also a mechanism to:

- Control any unauthorized or illegal encroachments, however caused
- Recover costs incurred in administering Encroachment Permits and Encroachment Agreements
- Collect market rents for authorized encroachments
- Minimize the opportunity of litigation claims associated with encroachments
- Minimize the opportunity for claims of adverse possession.

COMMUNICATION STRATEGY:

The City's objective is to inform and educate all property owners in the City of Vaughan including staff of the new Encroachment By-law, thus promoting City Council's commitment to community safety and the protection of Public Lands from unauthorized use by abutting private property owners. The primary means to deliver this message shall be through the development and distribution of an information brochure, which will be available at all City owned public facilities and may be inserted within the City's water billings from time to time as well as being distributed to all new Vaughan residents. In addition, this information and Encroachment By-law shall be available on the City's web site and included in the Vaughan Community Information Guide along with being posted on a staggered basis or as required on the City Page of the local community newspaper and other communication outlets.

DEFINITIONS:

In the context of this policy the following terms are defined:

<u>Alter</u>	Means a change in grading form or substance from its original state.
<u>City:</u>	Means the Corporation of the City of Vaughan, in the Regional Municipality of York.
<u>City Solicitor:</u>	Means the head of the City's Legal Services Department and shall include his or her designate.
<u>Commissioner:</u>	Means the City's Commissioner of Legal & Administrative Services and shall include his or her designate.
<u>Complex Encroachment:</u>	Means a major encroachment as determined by the City.
<u>CSMS Application:</u>	Means the Customer Services Management System (CSMS) computer program used by the City to track resolutions of complaints or inquiries.
<u>Easement:</u>	Means an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence.

<u>Encroachment:</u>	Means any type of landscaping or vegetation, natural or man-made object(s) or item(s) of <i>Personal Property</i> of a <i>Person</i> , which exists or is located wholly upon, or extends from a person's premises onto, <i>Public Lands</i> and shall include any aerial, surface or subsurface encroachments.
	<ul style="list-style-type: none"> i) <u>Aerial encroachment</u> means an encroachment that is located at least 300 millimetres (12 inches) above the surface of public lands. ii) <u>Surface encroachment</u> means an encroachment that is located anywhere between the following: the surface of public lands to a height less than 300 millimetres (12 inches) and beneath the surface of public lands to a depth of not more than 25 millimetres (1 inch). iii) <u>Sub-surface encroachment</u> means an encroachment that is located beneath the surface of public lands to a depth exceeding 25 millimetres (1 inch).
<u>Encroachment Agreement:</u>	Means an agreement prepared for execution by the City and a person granted authorization to erect, place, alter or continue a Complex Encroachment.
<u>Encroachment Permit:</u>	Means a license (permit) prepared for execution by the City and a person granted authorization to erect, place, alter or continue a Simple Encroachment.
<u>Expenses:</u>	Means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, application fees, administration fees, dispute resolution/ mediation fees, survey fees, taxes, outlays, legal fees and losses.
<u>Fence of Open Construction:</u>	Means a fence constructed so that at least one third (1/3) of its vertical surface area is open space, enabling motorists and pedestrians to have a clear view through such fence.
<u>Municipal Enforcement Officer:</u>	Means a person appointed or employed by the City as a municipal law enforcement officer under Section 15 of the Police Services Act, R.S.O. 1990, c.P.15, as amended.
<u>Notice:</u>	Means any notice required to be given by the City to the Owner with respect to this by-law, such notice shall either be delivered or sent by prepaid registered mail as per the Clerk's Department information or such other address as the Owner has given the Clerk's Department. Such notice shall have been deemed delivered on the third business day after mailing.
<u>Owner:</u>	Means the registered owner of a parcel of property as such person is described in the records of the land registry office.
<u>Person:</u>	Means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the <i>Interpretation Act</i> of Ontario, as amended, but specifically excludes the City.
<u>Personal Property:</u>	Means any object or item of property other than real property.
<u>Premises:</u>	Means a parcel of real property under registered ownership and includes all buildings and structures thereon.
<u>Public Lands:</u>	Means lands owned by the City, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or

trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk but does not include property owned by the Regional, Provincial, Federal Government, a Crown Corporation, Hydro, Utility or Railway Company.

<u>Encroachment:</u>	A committee that meets when required to deal with encroachment matters or other real estate issues and may contain members from Engineering, Public Works, Legal, Parks, Planning, Buildings and when required any Council Member.
<u>Right-of-Way:</u>	Means a <i>Person's</i> legal right, established by usage or by contract, to pass through grounds or property owned by another <i>Person</i> .
<u>Sight Triangle:</u>	Means the area of <i>Public Lands</i> abutting the corner of a lot enclosed by the projection of each property lot line.
<u>Simple Encroachment:</u>	Means a minor encroachment as determined by the City.
<u>Temporary Permit:</u>	Means a Road Occupancy Permit or other <i>City</i> permit to manage the activities on or adjacent to <i>Public Lands</i> ;
<u>Unauthorized Encroachment:</u>	Means any <i>Encroachment</i> not authorized by the "Encroachment By-law".
<u>Woodlands:</u>	Land covered with trees or forest or other naturalized vegetation.

RELATED POLICIES AND PRACTICES/ BYLAWS:

Highway and Boulevard Prohibitions By-law 358-86
Open Space/ Parkland Encroachment Policy – July 4, 1994
Road Cut Permits By-law 294-94 (To be updated by the future Road Occupancy Permit By-law)
"Vaughan Parks By-law" 134-95, as amended
"Fees & Charges By-law" 396-2002 as amended
"Public Property Sign By-law" 178-2003 & 203-92 as amended
"Property Standards By-law" 409-99 as amended
"Littering and Dumping By-law" 3-2004
"Newspaper Box By-law" 372-2004
"Public Property Tree Protection By-law" ____ - 2005

ENCROACHMENTS PROHIBITED AND EXEMPTIONS:

Whether deliberately or inadvertently no *Person* shall erect, place, or continue, or cause to be erected, placed, or continue, an encroachment of any kind on *Public Lands*, or *Easements* in favour of the *City*, except where permitted to do so in accordance with this by-law.

In addition, whether deliberately or inadvertently no *Person* shall *Alter* or cause to be *Altered*, an encroachment of any kind on *Public Lands*, or *Easements* in favour of the *City*, except where permitted to do so in accordance with this by-law.

Notwithstanding the above, the provisions of this policy/ by-law do not apply to the following classes of encroachments:

- i) Signs, as authorized through By-law Number 178-2003, known as the "Public Property Sign By-Law" and By-law 203-92 as amended;
- ii) Waste, as authorized through By-law Number 3-2004, known as the "Littering and Dumping By-law";
- iii) Maintenance and occupancy of property, as authorized through By-law 409-99, as amended, known as the "Property Standards By-law";

- iv) Newspaper boxes, as authorized through By-law Number 372-2004, known as the "Newspaper Box By-law";
- v) Properties which are designated by City By-law as being of historic or architectural value or interest pursuant to the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended;
- vi) A temporary encroachment arising as a result of construction, maintenance or other activity as authorized under a valid temporary permit issued by the City;
- vii) Encroachment permitted as a result of a written and signed agreement with the City, other than an Encroachment Permit or Encroachment Agreement;
- viii) Encroachment arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen his or her driveway, provided a Curb Cut Application/ Permit from the City is also issued to the owner; and
- ix) Encroachment arising from surface changes made in connection with residential driveways, provided such encroachments have not been constructed within the *Sight Triangle* and does not breach any other municipal by-law or regulation.

IDENTIFICATION:

Encroachments shall be identified by either City staff while performing their daily duties and/ or by the Enforcement Services Department (Municipal Enforcement Officer) in response to inquiries by City staff or the Public along with any legal documents, compliance letters, aerial photographs, surveys, visual inspections, complaints or information from internal and external sources, howsoever provided.

ADMINISTRATION OF ENCROACHMENTS:

To initiate an encroachment review, all complaints/ inquiries shall be forwarded whether by email, paper copy or phone call to the Enforcement Services Department for input into the Customer Services Management System (CSMS) as per Appendix A. City staff shall complete the preliminary review section of the *Application for Encroachment* form and send it via email or internal mail for input into the CSMS system. Similarly external complaints/ inquiries shall be entered directly into CSMS along with the preliminary review section of the *Application for Encroachment* form for circulation and if required, to the applicable City Department.

The Enforcement Services Department and/ or the applicable City Department(s) shall complete a preliminary investigation report to validate the situation and determine what course of action, if any, should take place. A possible encroachment shall be identified as not applicable, unauthorized as no City approval granted which shall require removal, or authorized as an Encroachment Permit or Encroachment Agreement is currently in effect or required, under the By-law.

a) Removal of Existing Encroachments:

An unauthorized encroachment, when applicable shall be reviewed by the affected City Department to determine whether the encroachment should be removed or warrants an application for an Encroachment Permit or Encroachment Agreement using *Appendix B* as a guide. In either case, the enforcement shall be the responsibility of the Enforcement Services Department to issue the notice upon its own initiative and/ or upon the request of the Department in control of the affected lands and as per the requirements of the "Encroachment By-Law". The non-compliance notice/ letter shall be either delivered or sent by registered mail to the owner describing any of the above requirements. Notice will be served to the owner to ensure interruption of continuous possession.

Where an encroachment is not authorized to continue, upon written notification from the City it is incumbent upon the owner to cease the encroachment forthwith and remove all encroachments within a thirty (30) day time period at the owner's expense. It shall be the responsibility of the affected City Department working with the Enforcement Services Department to remove, fill in or close up the encroachment and restore the public lands to their former conditions. The costs of enforcement, including any other expenses, shall be borne by the Department in control of the affected lands and recovered from the owner as provided in section 14 of the Encroachment By-law.

Where a request for removal of an encroachment is not complied with within the stipulated period of time the following options may be considered:

- i. Where the encroachment consists of objects/ structures etc. that can easily be moved, City staff may remove the objects/ structures and store/ discard them at the expense of the owner and without compensation.
- ii. Where the encroachment consists of trees or other vegetation, City staff may remove the trees or vegetation and discard them or relocate them elsewhere on City-owned property at the expense of the owner and without compensation.
- iii. In all other cases the concerned Department shall request the Legal Services Department to commence legal proceedings to regain possession of the land and the Legal Services Department may commence an action against the owner.

In the case of a dispute with an owner where the affected City Department cannot resolve the matter or when any other need arises, the Real Estate Committee shall meet to resolve the concern. Alternatively, if a resolution still cannot be achieved with the owner, the Encroachment Committee may impose mandatory mediation before going to court. All costs to be paid by the owner if the mediator rules against the owner.

b) Authorization of Existing or New Encroachments:

In very limited cases an owner may continue encroaching onto Public Lands for a specified length of time with written approval from the City, which may take the form of an Encroachment Permit in the case of a simple encroachment or an Encroachment Agreement in the case of a complex encroachment using *Appendix B* as a guide. In special cases and where established Departmental criteria are met, the Encroachment Committee may also recommend to Council the sale of Public Lands, if it deemed in the interest of the City and then only upon the approval of Council.

Administration of encroachments is the responsibility of the Real Estate Division, Legal Services Department for Encroachment Agreements relating to complex encroachments. Whereas, Special Projects, Licensing & Permits Division, Clerk's Department is responsible for Encroachment Permits relating to simple encroachments. In the administration of an encroachment all affected City Departments and/ or external agencies will be consulted for their input.

The Clerk's Department and the Real Estate Division of the Legal Services Department shall maintain a directory of all authorized Encroachment Permits and Encroachment Agreements. Copies of the Encroachment Permits and Encroachment Agreements shall be sent to the Building Standards Property files to support compliance requests from lawyers, to the Enforcement Services Department to support their investigation of future encroachments as either authorized or not authorized and to the affected City Department.

In the case of non-payment of any expenses, the value of the expenses shall be recovered from the owner as provided for in section 14 of the Encroachment By-law.

i) Encroachment Permits for Simple Encroachments - License of Occupation

An Encroachment Permit is a simple encroachment, which at the sole discretion of the City shall specify the general responsibilities of the owner and the City including any insurance and maintenance requirements. The term of the Encroachment Permit shall be for the life of the encroachment, or until the sale of the owner's property, or until application is made for development of the owner's property, or until the encroachment is required for municipal purposes. The owner shall be required to pay a non-refundable application permit fee as prescribed within our "Fees and Charges By-law" 396-2002 as amended from time to time including any additional expenses.

A license is different from a lease in that it is a limited permit exclusive and personal to an individual for the use of or entry to land. It denotes a shared occupation, does not run with the land and is non-registerable and non-assignable. On short notice the City can terminate the granted permission.

Licenses are usually used in situations where it will not be possible to remove illegal encroachments without undue hardship. Such an arrangement stresses that the encroachment is not permanent and that the City intends to ultimately use the lands.

Some municipalities prefer licenses because leases are more binding and perceived as more permanent.

Licenses may also be granted for a term, (i.e. five years, renewable upon re-evaluation, etc). Normally they are valued at rates similar to those of leases taking into consideration the use permitted, fencing provisions and duration. However, due to the municipality's ability to retrieve the lands on short notice, licenses may be given for nominal amounts plus a one time administrative cost.

In Vaughan, residents requesting rear open space who wish to fence in the area are expected to object and have in the past to a license because of the non-permanent nature, they appear to be generally unprepared to incur additional costs such as fencing. The meaning of a lease verses a license is easier to understand, and therefore generally preferred by the residents.

This alternative can be used to legalize existing encroachments or to grant "gardening plots" where appropriate or to permit use for a short interim period until a park is developed.

ii) Encroachment Agreement for Complex Encroachments - Leases

An Encroachment Agreement is a complex encroachment, which at the sole discretion of the City, may be registered on title, shall specify all responsibilities of the owner and the City including insurance and maintenance requirements. The agreement shall take the form of a lease or the encroachment when required may be authorized by City by-law alone. The term of the Encroachment Agreement shall be determined by the City and will be for: a specified duration of time, or for the life of the encroachment, or until the sale of the owner's property, or until application is made for development of the owner's property, or until the encroachment area is required for municipal purposes.

The owner shall be required to pay a non-refundable application agreement fee as prescribed within our "Fees and Charges By-law" 396-2002 as amended from time to time. The owner shall also be required to pay an administration fee and current market rent for the lands subject to the encroachment as well as all other expenses. Current market rent shall be ten percent of current market value of the land subject to encroachment for the first year of the agreement, increased by three percent per annum for each subsequent year of the term of the agreement. Current market value shall be based on the highest and best use of the owner's property.

Leases may be granted for any period of time and for any amount. Most municipalities use both *long-term* and *short-term* leases depending on the circumstances of an existing encroachment. The City has entered into a few long-term leases respecting open space lands.

Granting a lease results in the land coming under the jurisdiction of the *Tenant Protection Act, 1997* and therefore requires a monitoring system. However, it is difficult to enforce any conditions regarding use of lands. In addition, the tenant is liable for insurance, taxes and rent. Usually, the documents are registered on title in the Registry Office. Potential problems associated with *long-term* leases are summarized as follows:

- i. Long-term lease may imply that the lands are surplus to our needs that may be of concern where such lands have been originally conveyed to the City for environmental, engineering reasons, parkland or woodlands.
- ii. Residents tend to perceive leases as permanent grants of rights in the lands and therefore proceed to bring in fill and to construct retaining walls. It is extremely difficult for the City to enforce provisions, as most areas are fenced. Enforcement may cause an additional administrative load.
- iii. Long-term leases, especially those over 50 years are almost equal to an easement sale when considering valuation of the land. The City land may be of benefit to the abutting owner by

increasing the value of their existing lot as the lease usually runs with the land. It is appropriate to charge a higher amount for such leases.

- iv. Long-term leases on parkland or open space water management areas may encourage new encroachment requests.

Staff can support long-term leases in certain circumstances, i.e. where the City may benefit by reducing maintenance costs for landscaping purposes, or for other reasons. Specific covenants such as prohibiting the cutting of trees or the changing of a garden can be recommended depending on the specific situation. Any failure to abide by the covenants would result in the City taking possession. A long-term lease need not be assignable upon sale of the abutting land to ensure the City has an opportunity to review compliance with its policies and conditions.

In a situation where numerous residents on a street are requesting land to be added to their rear yard, the Parks Department has suggested using a *short-term* lease i.e. 10 years with a cancellation clause to allow for flexibility of future City needs or planning. The problems associated with *short-term* leases are summarized as follows:

- i. If the lease is terminated, the fencing would have to be relocated and residents may be reluctant to absorb the cost.
- ii. If a lease is cancelled, or not renewed at the end of the ten years, the City will be on the defensive to provide reasons for their decision. Residents may expect immediate development of such area by way of landscaping, or planting of trees to offset any negative perception.
- iii. A lease even for only 10 years implies the land is not needed and is therefore, surplus, and sets some level of permanency to the encroachment.

Staff can support charging a higher fee for assignable long-term leases of over 20 years. Short-term leases could be either a one-time administrative charge, plus costs, taxes and insurance, or a yearly rent.

Yearly rent for land is usually calculated on the basis of the per sq. m. rate x 10% rental x the area.

However because these leases would have restrictive covenants regarding grading, etc it would be more appropriate to charge less, (i.e. 50% of rental, or an annual fee to cover costs). Where leases are granted for landscaping purposes only, or are on a ravine or open space area, most municipalities charge a nominal amount plus costs and a one-time administration fee.

iii) Sale of Land – in special cases

Sale always implies that the lands are surplus to municipal needs. At draft plan of subdivision approval stage one of the primary areas of negotiations is establishing the top of bank in order to create a rear lot line which is to be a realistic boundary between open space/ woodlands and residential or adjacent land use/ zoning. The purpose of this boundary is to establish a safe setback from the valley or hazard lands and to ensure that the valley slopes or fringe areas are not destabilized by uses such as retaining walls, gardens and sheds.

Open space lands or woodlands have been conveyed to the City for nominal consideration for environmental and engineering reasons or to enhance the City's parkland holdings. Where environmental reasons such as the preservation of natural wildlife habitats and environmentally sensitive areas are applicable, sale should be prohibited as per provincial statute or regulation.

If these lands are routinely sold the perception will be given that the City is not committed to preserving its open space lands. This has a negative effect on negotiations to acquire future holdings. These factors must be carefully considered so as not to increase the reluctance of developers to settle for reasonable top of bank lines.

In general, staff supports the existing sale policy that prohibits sale of land below the top of bank. Sale should not ever be considered as a standard policy. However, if the circumstances are in any way unusual or if it is of benefit to the City to sell, i.e. side yards/ unused walkways or road allowances, it may be considered as an appropriate mechanism to resolve an encroachment problem.

In fact, all municipalities have provisions that allow for sale of land for existing encroachments. Criteria used to support such a decision can be as follows:

- i. To straighten boundary line;
- ii. Where it is demonstrated conclusively for reasons of security, safety, environmental, conservational and recreational integrity, and the cost of maintenance, that the lands should not remain as parkland or if it is of benefit to the City to sell them, the lands may be disposed of. The saleable area is therefore considered to be surplus, meaning not necessary to fulfil the City's operational mandate;

An analysis of Parks and Engineering/ Public Works objectives and the nature and history of the encroachment should be undertaken by the Real Estate Committee. Where the Real Estate Committee is prepared to recommend a sale of land at market value or the value in contribution to the abutting site, a report to Council will be prepared under the direction of the City Solicitor.

DEPARTMENTAL/ OTHER COMMENTS:

This section provides an updated historical overview of comments related to Encroachment concerns, which have been incorporated into the Summary section and the Encroachment By-law. This section shall also provide a reference point to review, evaluate and apply the appropriate conditions to an *Application for Encroachment* from a Department's perspective.

a) Parks Department Comments

In principle, and consistent with the Parks and Recreation Master Plan, the Parks Department do not recommend with any permits, lease or sales of any parks, open space lands or woodlands owned by the City. In their opinion, the sale of such lands shall erode the inventory of parks, open spaces or woodlands and the Master Plan recommends that such lands not be sold.

However, where the Parks Department receives an Application for Encroachment Form for either a permit or lease or where Council in certain circumstances approves the sale of such lands, the Parks Department recommends the following conditions:

- i. That the subject lands not be sold, but that instead the owner enters into a lease with the City.
- ii. That for long-term leases or sales the owner place a black chain link fence to include the land being leased, and for short-term, a post and wire farm fence (with finished wood posts every 2.4 metres, delineating the area being leased. For short-term leases, that the existing property line fence be retained and the City permit a maximum 3.0 metres opening, or gate, to the leased area whereas with a long-term leases the old fence can be removed.
- iii. That the maximum land to be leased be three 3.0 metres from the property line.
- iv. That the City of Vaughan Engineering Department review any such request and comment on any impact on the storm water management requirements.
- v. That the lease for short term be for no more than five (5) years, and that the City retain the right to terminate the lease with reasonable notice.
- vi. That woodlands not be sold and should be exempted from short-term and long-term leases and permits.

b) Engineering & Public Works Departments Comments

i) Open Spaces/ Parklands/ Woodlands/ Storm Water Management

Most open space areas are designed for overland flow routing and/ or storage of floodwaters. There are also areas that are identified as having potential for slope failure through erosion or instability.

For most overland flow routes any grading or additional filling would create disruption of flows and/ or reduction in storage areas. Therefore when these areas are sold or leased, there is a likelihood of filling which can disrupt the original engineering design.

In summary, the biggest concern relates to the use of the land and change in grading that could affect the flow/ storage of water. The width of area and degree of slope, or its stability, have a bearing on the Department's comments.

ii) Road Allowances or Sewer, Water and Road Easements

The Engineering & Public Works Departments do not support any permits, leases or sales of any road allowances or easements owned by the City except in the case of sale where it can be demonstrated that the road allowance or easement is no longer needed to support or improve City's infrastructure.

In certain locations, permanent existing encroachments, such as signs as per by-law 178-2003 and 203-92 as amended, fences or landscaping improvements can be tolerated within the road allowances or easements but it should be discouraged for the following reasons:

- i. Public Safety – Encroachments on public lands can be a safety hazard to the public, i.e. over grown landscaping/ vegetation or fencing blocking the sight triangle on corner lots.
- ii. Restoration Costs – Encroachment increases costs to the taxpayer for the restoration of public lands, i.e. underground sprinklers, unauthorized filling and obstruction of roadside drainage ditches, pool drains or rain water leaders with holes in curb, driveway curbing, driveway light posts, pillars, ornaments, illegal driveways in the sight triangle or garden/ storage shed/ building materials within easements.
- iii. Insurance Claims – Encroachment may give rise to serious liability claims resulting from accidents within the road allowance, i.e. large boulders in boulevard, flooding resulting from unauthorized filling/ culvert alteration or landscaping alteration such as replacing sod with river stone rocks in the boulevard resulting in the discharge of the river stone rocks towards homes, cars or people during snow removal activities.

The Department shall not actively seek to identify encroachments but shall deal with them on a case-by-case basis. Where the Department anticipate work within the City's road allowances or easements the Departments shall attempt to advise owners to remove all encroachments within a specified time prior to the commencement of work as per the City's Encroachment By-law. The Department shall not repair, replace or compensate any owner for their failure to remove any encroachments within the specified time as owners encroached onto the road allowance or easement at their own risk. The Department shall only repair or replace as per the City's current criteria; owners who take it upon themselves to install speciality items like pattern concrete driveways or other unique landscaping features do so at their own risk and the City cannot be held responsible for failure to restore or replace it to the owner's satisfaction.

However, where the Departments receives an Application for Encroachment Form for either a permit or lease or where the Real Estate Committee is considering a recommendation to City Council for the sale of such Public Land, the Departments recommend the following conditions:

Encroachment of City Roads or Sewer, Water and Road Easements

- i. *That the subject lands not be sold.*
- ii. *That where existing structures encroach upon a City road allowance or easement, the Commissioner of Engineering and Public Works or his/ her designate be authorized, if appropriate, to work with the Legal Department to issue Encroachment Permits for simple encroachments or Encroachment Agreements for complex encroachments for said structures. The said Encroachment Permits or Encroachment Agreements to be issued only on the following conditions:*
 - a) **CLEAR ACCESS.** *That the encroachment, in the opinion of the Commissioner of Engineering and Public Work or his/ her designate, does not adversely affect or impede the public use of the road allowance, in the case of an easement, our ability to service/ replace our infrastructure or create any safety concerns;*
 - b) **SURVEY.** *That the applicant supplies the City with an Ontario Land Surveyor (OLS) approved reference plan showing the accurate dimensions of the encroachment, when required;*
 - c) **EXPENSES.** *That the applicant be responsible for all costs associated with the encroachment including but not limited to removal, fees, registration and legal costs if required;*
 - d) **INSURANCE.** *That the City is held harmless from any liability or claims for damages resulting from the encroachment in the appropriate form and of a specified amount of liability insurance policy, with the City named as an "Additional Named Insured" therein;*
 - e) **WHO.** *That the permission to encroach be granted only to the current owner or purchaser of the adjacent private property;*
 - f) **TERM.** *That the "Encroachment Permit" be for the life of the encroachment with the right to terminate the "Encroachment Permit" with minimal notice and the "Encroachment Agreement" be for no more than five (5) years with the City's right to terminate the "Encroachment Agreement" with minimal notice;*
 - g) **FEE.** *That a fee be attached to the Application for Encroachment Form to cover the Departments' costs; &*
 - h) **EXTENSION.** *No further extension and/ or additional encroachment rights granted.*
- iii. *That where a structure encroaches upon a City road allowance or easement, and the said road allowance or easement, in the opinion of the Commissioner of Engineering or Public Works or his/ her designate, does not adversely affect or impede the City, the City may release that portion of the road allowance or easement affected by the encroachment subject to the following conditions:*
 - a) **PROOF.** *That the applicant prove to the City that the road allowance or easement is no longer needed to maintain or improve the City's infrastructure;*
 - b) **EXPENSES.** *That the applicant be responsible for all costs associated with the release including but not limited to legal, survey and registration;*
 - c) **APPROVAL.** *That such sale of the road allowance or release of easement rights be approved by City Council; &*
 - d) **FEE.** *That a fee be attached to Application for Encroachment Form to cover the Departments' costs;*

c) T.R.C.A. Comments

Toronto and Regional Conservation Authority (T.R.C.A) has the authority to ensure that the land use conforms to Ontario Regulation 158 made under the Conservation Authority Act. This means that there can be no structures in a flood plain area, or filling within the regulated area.

In general, Authority Staff do not support the permit, lease or sale of publicly owned hazard lands as the intent of public acquisition of valley lands is to protect such lands against unwise use which could affect the land's ability to perform its natural functions from the flooding and erosion perspective. Their

experience has shown that allowing such lands to be permitted, leased or sold results in additional unwanted encroachment and enforcement difficulties.

Should the City decide to permit, lease or sell such lands, then the following conditions are suggested by T.R.C.A.:

- i. If high/ dry and beyond 10metres setback from the top of bank, T.R.C.A. has no concerns.
- ii. Lease contain provisions to ensure that there is compliance with the fill regulations within the Regulated area and no structures be permitted in the flood plain areas.
- iii. Fencing needs to be appropriate for the area.
- iv. The fee per acre for the flood plain should be reviewed with TRCA so as not to jeopardize TRCA current base market value. TRCA is aware that most municipalities typically charge more than this current base market value.
- v. An agreement is registered on title of the property having the effect of prohibiting the removal of vegetation, alteration to grades, or placement of any buildings or structures (including fencing) within such lands. This would be a tripartite agreement between the owner/ lease, City of Vaughan and the T.R.C.A.

SUMMARY

In general, the City must retain its obligation to preserving Public Lands and easements by establishing an encroachment by-law to safeguard environmental, operation and engineering concerns. Due to the reality of the situation the policy/ by-law must also provide a mechanism for dealing with existing and requests for encroachments.

The City of Vaughan affirms its commitment to preserving Public Lands and easements and to this end adopts the following Encroachment Policy as a companion to facilitate the administration of the Encroachment By-law:

a) Communication Strategy

The City adopts an information package to be posted on the City's web site, which may take the form of a brochure or other communications from time to time such as the City page within the local community newspapers to inform and educate private owners and staff about encroachments onto Public Lands. The brochure may be included with water billing distributed from time to time and to new Vaughan residents.

b) Illegal/ existing Encroachments

- i) It is general policy that illegal encroachments on Public Lands be removed immediately.
- ii) The City of Vaughan will not actively take steps to identify illegal encroachments, however where such encroachments are identified through observations by operational staff in the performance of their duties or through inquiries/ complaints, this Policy along with the Encroachment By-law shall apply to such encroachment and the private property owner(s) encroaching shall be notified and shall be required to comply with this Policy/ By-law.
- iii) In the event that a property owner refuses to either remove an encroachment or enter into an agreement (e.g. permit/ license or lease) as provided for in this Policy/ By-law, that staff are authorized to take appropriate legal action to have the encroachment removed.
- iv) In restrictive cases where the Real Estate Committee is prepared to recommend the sale of Public Land, an analysis examining the history, nature and extent of the encroachment together with the long and short term Departmental objectives should be undertaken to provide City Council with the recommended disposition of the matter especially in cases where there is a strong potential for an adverse possession claim.

- v) Where structures are involved, and/ or it is impossible to remove the encroachment without considerable expense and disruption, in this case a “complex encroachment”; consideration may be given to permitting the encroachment to remain for as long as the abutting landowner owns the land and agrees to enter into an Encroachment Agreement. Such permission will terminate upon the sale of the abutting lands and will be subject to appropriate conditions. A request by a subsequent landowner to maintain the encroachment shall be considered in the context of this Policy/ By-law.
- vi) Encroachments which are generally minor in nature, in this case “simple encroachment” but which are not so serious as to require removal or where removal can cause undue hardship, permission to maintain the encroachment may be given subject to the abutting landowner agreeing to enter into an Encroachment Permit with the appropriate conditions and paying the applicable application fee & expenses.
- vii) Current market values rental rates where appropriate, plus all other expenses, shall apply to all permits/ licenses, leases or sales. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the Encroachment Permit or Encroachment Agreement, which may also include such matters as a survey, insurance, protective covenants and restriction on use.

c) Request for Encroachments

- i) The public does not view the encroachment as a restrictive use of public land and/ or an impediment to the enjoyment of the land.
- ii) Where a request to encroach or to purchase land is received and it is demonstrated that for reasons of security, safety, environmental, conservational and recreational integrity, planning and engineering objectives or prohibitive cost of maintenance that it is beneficial to the City, the Public Lands shall be either permitted or leased and in special cases recommended for sale by the Encroachment Committee to provide City Council with the recommended disposition of the matter.
- iii) Current market values rental rates where appropriate, plus all other expenses, shall apply to all permits/ licenses, leases or sales. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the Encroachment Permit or Encroachment Agreement, which may also include such matters as a survey, insurance, protective covenants and restriction on use.
- iv) That Open Space lands, not including Parklands or Woodlands should not be sold to residential owners to enable them to extend their lots except in compliance with the following conditions:
 - i. The lands should not be below top of bank.
 - ii. The lands should be sold at the market value for parklands zoned Open Space.
 - iii. The City/ owner should erect a 1.5m black vinyl chain link fence along the new property line.
 - iv. Lands should be sold only if rear lots lines would be continuous to avoid gap-toothed appearance.
 - v. There is a strong potential for an adverse possession claim.
 - vi. The purchaser should pay all expenses including but not limited to surveys and fences.
- v) For storm water management, flood plain or ponding lands which have been dedicated to the municipality at no cost specifically for storm water management purposes, the following policy:
 - i. That the City not sell any lands within storm water management areas below the finalized top of bank as identified by the Engineering Department

in consultation with the Toronto Region Conservation Authority.

- ii. That any lands between the abutting resident's lot line and the finalized top of bank with a minimum 5m offset may be sold at nominal cost provided that all survey, legal, conveyance, and, if required, fencing costs or fencing relocation costs be paid by the abutting residents; and further that, where practical, all the residents abutting the particular storm water management areas must participate.
 - iii. That commencing immediately all subdivisions be lotted back to a realistic and "finalized" top of bank line; that fences be installed on the rear lot lines; and that any unauthorized filling beyond the top of bank for the purpose of extending backyards into storm water management areas be deemed to be encroachments and removed at the owner's expense.
- vi) That the City not sell, lease or permit any parklands, woodlands, road allowances or easements that have been purchased or dedicated under the Planning Act. The general implication of no sale, lease or permit would be:
- i. Owners would not obtain any private use of Public Lands.
 - ii. The boundary line between the private owner and the non-active parkland should be properly fenced, if not already done so under the subdivision agreement, then at the municipality's expenses; and all encroachments, if any, removed.
 - iii. City maintenance responsibility would continue.
 - iv. Full public access.
 - iv. The stability of any slopes or preservation of environmental areas beyond the residents lot line would remain with the municipality.

ATTACHMENTS:

City of Vaughan Encroachment By-Law
Application For Encroachment

CONTACT:

For General information about the Encroachment By-law, please contact
Access Vaughan

To report encroachments in City Parks or Woodlands or Open Spaces, please contact:
Parks Operations & Forestry Division, Parks Department

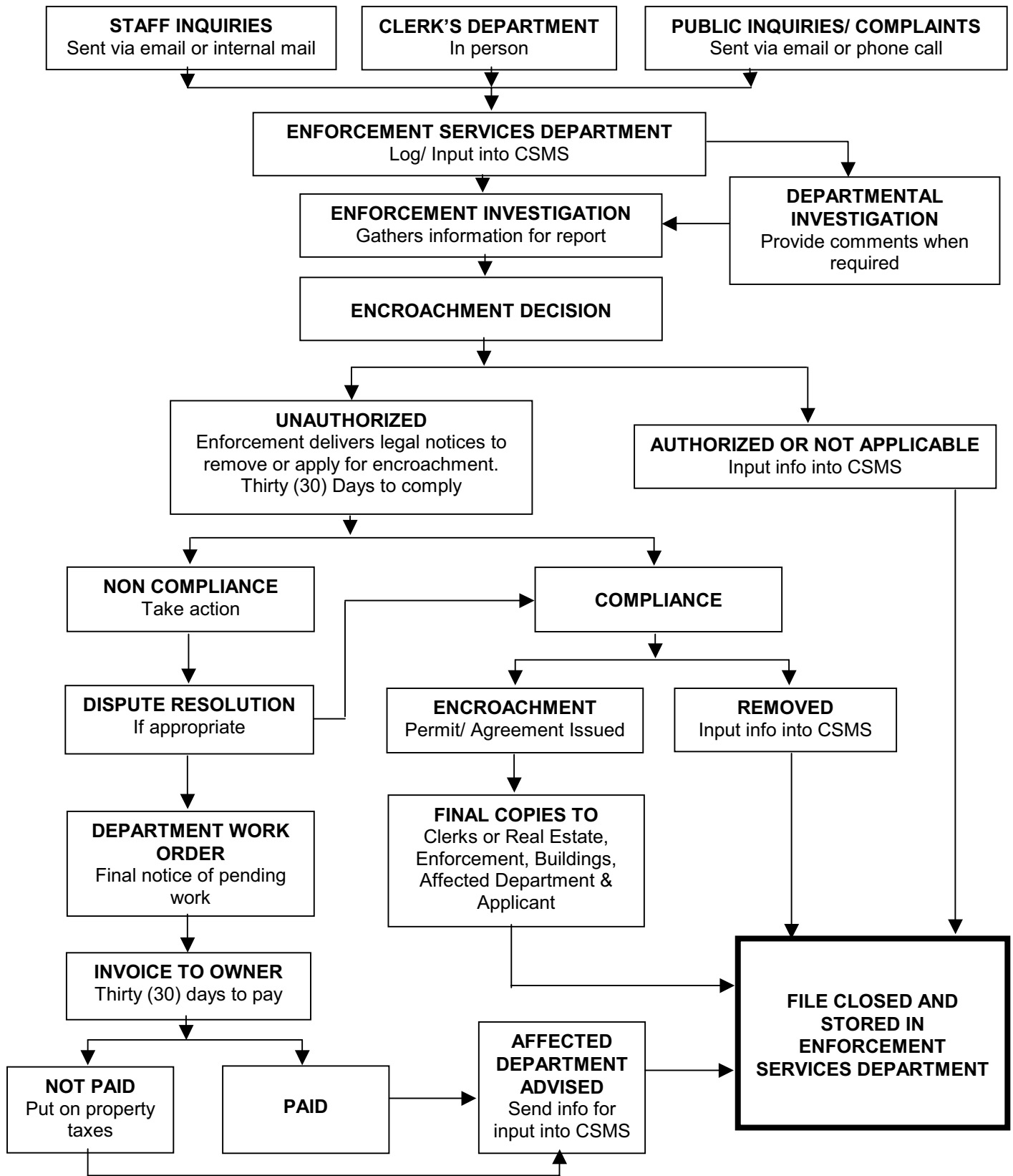
To report encroachments within the road allowances or easements, please contact:
Road Maintenance Services Division, Public Works Department

Application for Encroachment Permit for simple encroachments, please contact:
Special Projects, Licensing & Permits Division, Clerk's Department

Application for Encroachment Agreement for complex encroachments, please contact:
Real Estate Division, Legal Services Department

APPENDIX A

Preliminary Encroachment Investigation Flow Chart:



APPENDIX B

Encroachments Examples Not Allowed

Fencing
Large Boulders
Driveway Curbing
Garden Composters
Pillars or Ornaments
Replacing Sod with River Run Rock
Illegal Driveways in the Sight Triangle
Unauthorized paved or unpaved pathways
Underground Sprinklers (irrigation systems)
Unauthorized Culvert/ Piping or Grading or Filling
Driveway Light Posts & Associated Electrical Works
Vehicles parked on public land offered for retail sale
Pool Drains or Rain Water Leaders With Holes in Curb
Garden Plots in existing Developed Parks or Woodlands
Garden Shed or Building Materials (wood, bricks, blocks, etc.)
Trailers, campers, boats or recreational structures: (volleyball or basketball nets), etc.
Decks, Stairs, Railings, Patios, Insect Zappers, Pools, Hot tubs, Deck Footings, etc.
Play Structures including sand boxes, gyms, playhouses, swings, slides and tree houses

Pre-existing Encroachment Examples

Simple Encroachment

Vegetation

Garden Plot

Fence of Open Construction

Complex Encroachment

Inground Pool

Retaining Wall

Permanent Deck

Permanent Garden Sheds

ENCROACHMENT BYLAW
COMMUNICATIONS STRATEGY FOR ENCROACHMENT BYLAW

OBJECTIVES

1. Inform target audience of the City's new encroachment bylaw.
2. To promote Council's commitment to community safety and environmental stewardship through media coverage, City Page notice, and website posting

TARGET AUDIENCES

External

Residents
Business/Development
Ratepayers Associations/Property Owners
Media
Other levels of government

Internal

All staff

ACTION STEPS

ACTIVITY	RESOURCE	DUE DATE
Design website and Vibe page for “Encroachment bylaw,” to include: <ul style="list-style-type: none">• Splash page navigation• Section navigation• Copy / Description• Design elements – illustrations and photos	Engineering Corp. Comm. ITS	
Possible additional features: <ul style="list-style-type: none">• Website links to related sites• Brochure for possible mailers and distribution from City buildings<ul style="list-style-type: none">- 80,000 colour copies @ \$5,500- 80,000 b/w copies @ \$4,000- \$87 per thousand for delivery by Canada Post	TBD	
Launch activities: <ul style="list-style-type: none">• Memo to Council and SMT• Notice to staff through VIBE	Engineering Corp. Comm.	

PERFORMANCE MEASUREMENT

Track website visits. Monitor telephone calls. Observe media react

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THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER 000-2005

“Encroachment By-law”

A By-law of the Corporation of the City of Vaughan regulating encroachments on public lands, to amend By-law Number 134-95 and to rescind By-law Number 358-86.

WHEREAS the Municipal Act, 2001, S.O.2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following sphere of jurisdiction: Highways, including parking and traffic on highways at section 11(1) 1; Culture, parks, recreation and heritage at section 11(1) 5 and Structures, including fences and signs at section 11(1) 7;

AND WHEREAS section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act;

AND WHEREAS section 9(1) of the Municipal Act, 2001 provides that section 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS section 391(c) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

AND WHEREAS section 427(1) of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person’s expense, which that person is otherwise required to do under a by-law or otherwise has failed to do;

AND WHEREAS section 427(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

NOW THEREFORE the Council of the Corporation of the City of Vaughan enacts as follows:

SHORT TITLE

1. This By-law shall be known and may be cited as the “Encroachment By-law”

DEFINITIONS

2. In this By-law,
 - a) *“Alter”* means a change in grading form or substance from its original state;
 - b) *“City”* means the Corporation of the City of Vaughan, in the Regional Municipality of York;

- c) "City Solicitor" means the head of the City's Legal Services Department and shall include his or her designate;
- d) "Commissioner" means the City's Commissioner of Legal & Administrative Services and shall include his or her designate;
- e) "Complex Encroachment" means a major encroachment as determined by the *City*;
- f) "Easement" means an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a license;
- g) "Encroachment" means any type of landscaping or vegetation, natural or man-made object(s) or item(s) of *Personal Property* of a *Person*, which exists or is located wholly upon, or extends from a *Person's Premises* onto, *Public Lands* and shall include any *Aerial, Surface or Subsurface Encroachments*;
- j) "Aerial Encroachment" means an *Encroachment* that is located at least .300 millimetres (12 inches) above the surface of *Public Lands*;
 - ii) "Surface Encroachment" means an *Encroachment* that is located anywhere between the following: the surface of *Public Lands* to a height less than 300 millimetres (12 inches) and beneath the surface of *Public Lands* to a depth of not more than 25 millimetres (1 inch);
 - iii) "Sub-surface Encroachment" means an *Encroachment* that is located beneath the surface of *Public Lands* to a depth exceeding 25 millimetres (1 inch);
- h) "Encroachment Agreement" means an agreement prepared for execution by the *City* and a person granted authorization to erect, place, alter or continue a *Complex Encroachment*;
- i) "Encroachment Permit" means a license (permit) prepared for execution by the *City* and a person granted authorization to erect, place, alter or continue a *Simple Encroachment*;
- j) "Expenses" means any and all sums of money actually spent or required to be spent by the *City*, and shall include but not be limited to all charges, costs, application fees, administration fees, dispute resolution/ mediation fees, survey fees, taxes, outlays, legal fees and losses;
- k) "Municipal Enforcement Officer" means a person appointed or employed by the *City* as a municipal law enforcement officer under Section 15 of the Police Services Act, R.S.O. 1990, c.P.15, as amended;
- l) "Notice" means any notice required to be given by the *City* to the *Owner* with respect to this by-law, such notice shall either be delivered or sent by prepaid registered mail as per the Clerk's Department information or such other address as the *Owner* has given the Clerk's Department. Such notice shall have been deemed delivered on the third business day after mailing;
- m) "Owner" means the registered owner of a parcel of property as such person is described in the records of the land registry office;
- n) "Person" means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the *Interpretation Act* of Ontario, as amended, but specifically excludes the *City*;
- o) "Personal property" means any object or item of property other than real property;

- p) “Premises” means a parcel of real property under registered ownership and includes all buildings and structures thereon;
- q) “Public Lands” means lands owned by the *City*, and shall include but not be limited to any public highway, road allowance, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk but does not include property owned by the Regional, Provincial, Federal Government, a Crown Corporation, Hydro, Utility or Railway Company;
- r) “Right-of-way” means a *Person’s* legal right, established by usage or by contract, to pass through grounds or property owned by another *Person*;
- s) “Sight Triangle” means the area of *Public Lands* abutting the corner of a lot enclosed by the projection of each property lot line;
- t) “Simple Encroachment” means a minor *Encroachment* as determined by the *City*;
- u) “Temporary Permit” means a Road Occupancy Permit or other *City* permit to manage the activities on or adjacent to *Public Lands*;
- v) “Unauthorized Encroachment” means any encroachment not authorized by this by-law.

ENROACHMENTS PROHIBITED

- 3.
 - a) Whether deliberately or inadvertently no *Person* shall erect, place, or continue, or cause to be erected, placed, or continue, an *Encroachment* of any kind on *Public Lands*, or *Easements* in favour of the *City*, except where permitted to do so in accordance with this by-law.
 - b) In addition, whether deliberately or inadvertently no *Person* shall *Alter* or cause to be *Altered*, an *Encroachment* of any kind on *Public Lands*, or *Easements* in favour of the *City*, except where permitted to do so in accordance with this by-law.
 - c) Notwithstanding subsection 3(a) or 3(b), the provisions of this by-law do not apply to the following classes of *Encroachments*:
 - i) Signs, as authorized through By-law Number 178-2003, known as the “Public Property Sign By-Law” and By-law 203-92 as amended;
 - ii) Waste, as authorized through By-law Number 3-2004, known as the “Littering and Dumping By-law”;
 - iii) Maintenance and occupancy of property, as authorized through By-law 409-99, as amended, known as the “Property Standards By-law”;
 - iv) Newspaper boxes, as authorized through By-law Number 372-2004, known as the “Newspaper Box By-law”;
 - v) Properties which are designated by *City* By-law as being of historic or architectural value or interest pursuant to the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended;
 - vi) A temporary encroachment arising as a result of construction, maintenance or other activity as authorized under a valid *Temporary Permit* issued by the *City*;
 - vii) *Encroachment* permitted as a result of a written and signed agreement with the *City*, other than an *Encroachment Permit* or *Encroachment Agreement*;

- viii) *Encroachment* arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen his or her driveway, provided a Curb Cut Application/ Permit from the *City* is also issued to the owner; and
- ix) *Encroachment* arising from surface changes made in connection with residential driveways, provided such encroachments have not been constructed within the *Sight Triangle* and does not breach any other municipal by-law or regulation;

APPLICATION FOR ENCROACHMENT

- 4. a) Any person requesting authorization to erect, place, *Alter* or continue an *Encroachment* on *Public Lands* or *Easements* shall be required to submit an application to the *City* seeking permission to do so, along with payment of the non-refundable application fee as per the *City's "Fees and Charges By-law"* 396-2002, as amended.
- b) The form and content of the application(s) shall be as prescribed by the *Commissioner* from time to time, and a copy may be obtained from the Clerk's Department.
- c) Where an application to erect, install, *Alter* or continue a *Simple Encroachment* has been approved, the Clerk's Department shall advise the owner in writing that an *Encroachment Permit* must be executed. The applicant shall have thirty (30) calendar days to execute it and pay any applicable expenses.
- d) Where an application to erect, install, *Alter* or continue a *Complex Encroachment* has been approved, the Clerk's Department shall advise the owner in writing that an *Encroachment Agreement* must be executed. The *City Solicitor* shall prepare an *Encroachment Agreement*, and once the applicant has been notified in writing that the *Encroachment Agreement* is ready for execution, the applicant shall have thirty (30) calendar days to execute it and pay any applicable expenses.
- e) Where an applicant fails to pay the applicable expenses or fails to execute an *Encroachment Permit* or *Encroachment Agreement*, within the thirty (30) calendar days as prescribed in subsection 4(c) or 4(d), the applicant shall be deemed to have abandoned his application.

LIABILITY

- 5. The provisions of this by-law shall not be construed as relieving or limiting the responsibility or liability of any owner who is granted an *Encroachment Permit* or *Encroachment Agreement* onto *Public Lands* from any personal injury including injury resulting in death, or property damage resulting from such encroachment or from acts or omissions of such owner, or his/ her agents, servants, employees, contractors in the erection, placement, alteration, continuation or removal of any encroachment. Likewise, provisions of this by-law shall not be construed as imposing on the *City*, its officers, employees, servants, and agents any responsibility or liability whatsoever by reason of the approval of or issuance of either an *Encroachment Permit* or *Encroachment Agreement* or for the removal of any *Unauthorized Encroachment*.

INDEMNIFICATION

- 6. a) The applicant and/ or holder of an *Encroachment Permit* or *Encroachment Agreement* shall be jointly and severally responsible to indemnify the *City*, its officers, employees, servants and agents, from all losses, damages, costs, expenses, claims, demands, actions, suites, or other proceedings of every nature and kind arising from and in consequence of the erection, placement, alteration, continuation or removal of the *Unauthorized Encroachment*.
- b) The *Owner* shall file an annual certificate of its public liability insurance policy, in a form and the terms of which are satisfactory to the *City*, showing the *City* as an additional named insured.

REGISTRATION OF AGREEMENT

7. Where the *Commissioner* deems it appropriate, an *Encroachment Agreement* may be registered against title to the applicant's property with the land registry office and all expenses in doing so shall be paid for in advance by the applicant.

AUTHORITY OF COMMISSIONER

8. The *Commissioner* shall have delegated authority to:
 - a) Revise fees and charges dealing with encroachments under the *City's "Fees and Charges By-law"* from time to time as deemed appropriate; and
 - b) Approve or reject any application submitted for an *Encroachment Permit* or *Encroachment Agreement*; and
 - c) Revoke any *Encroachment Permit* or *Encroachment Agreement* that has been issued as a result of false or misleading statements, or undertakings, in the application, or has been issued in error; and
 - d) Impose such terms and conditions to any application and/ or *Encroachment Permit* or *Encroachment Agreement* as deemed appropriate; and
 - e) Determine whether any *Encroachment Agreement* expiring on a date after the date of enactment and passage of this by-law shall be renewed and/ or extended; and
 - f) Impose mandatory mediation before taking an owner to court, as the *Commissioner* may deem appropriate.

REVOCAION

9. The execution of an *Encroachment Permit* or *Encroachment Agreement* in respect of an *Encroachment* does not create any vested right in the owner or occupant of the premises to which the *Encroachment* is appurtenant, or in any other *Person*, and the *Encroachment Permit* or *Encroachment Agreement* may be revoked in accordance with the terms set out therein.

ACCESS TO ENCROACHMENT

10. No *Person* shall obstruct, hinder or interfere with the free access to any encroachment by a *Municipal Enforcement Officer*, employee, servant or agent of the *City*.

DISCONTINUANCE OF ENCROACHMENT

11.
 - a) If the owner of any premises to which an *Encroachment* is appurtenant desires to permanently discontinue the *Encroachment*, he/ she shall notify the *Commissioner* in writing and the *Commissioner* shall thereafter cause a notice to be sent to the owner advising that the *Encroachment* shall be removed or filled in and closed up, and the *Public Lands* shall be restored to their former conditions by the *Owner* at his/ her own expense.
 - b) If the *Commissioner* is at any time of the opinion that a breach of the terms and conditions attached to an *Encroachment Permit* or *Encroachment Agreement* has occurred and that the *Encroachment* should be discontinued, or where an *Encroachment Permit* or *Encroachment Agreement* has expired, the *Commissioner* may cause a notice to be sent to the owner advising that the *Encroachment* be removed or filled in and closed up, and the *Public Lands* be restored to their

former condition by the *Owner* at his/ her own expense.

- c) Where an *Owner* fails to comply with the *Notice* described in subsection 11(a) and/ or 11(b) within thirty (30) days of receipt of same, the *Encroachment* may be removed or filled in and closed up by the *City*, and the *Public Lands* restored to their former condition at the expense of the *Owner*, such *Expense* to be recovered in full in the manner provided in section 14 below, and until the *Encroachment* is so removed or filled in and closed up and the *Public Lands* restored to their former condition, all *Expenses* incurred by the *City* in respect thereto shall continue to be paid by the *Owner*.

EMERGENCY SITUATIONS

- 12. a) If the *Commissioner* deems that an emergency exists or may exist as a result of any *Encroachment* being or about to become a source of danger to the health and safety of the public, the *Commissioner* may,
 - i) notify in writing the *Owner* of the *Premises* to which the *Encroachment* is appurtenant, require the repair, removal, filling in or closing up of the *Encroachment* and restoration of the *Public Lands* to their former condition at the *Expense* of the *Owner*, so that the *Encroachment* is no longer deemed to be a source of danger or potential danger to the public by the *Commissioner*, and/ or
 - ii) take such measures on behalf of the *Owner*, without notice to the *Owner*, as the *Commissioner* may deem necessary to remove the danger or potential danger created by the *Encroachment*.
- b) Where the *Notice* described in subsection 12(a)(i) is not complied with within the time period stipulated therein, the *City* may repair, remove, fill in or close up the *Encroachment* and restore the *Public Lands* to their former condition, at the *Expense* of the *Owner*, such *Expense* to be recovered in full in the manner provide in section 14 below.
- c) Where the *Commissioner* elects to take any action under subsection 12(a)(ii), the *Expense* incurred by the *City* in so doing shall be recovered in full in the manner provided in section 14 below.

REMOVAL OF UNAUTHORIZED ENCROACHMENTS

- 13. a) Where the *City* becomes aware of an *Unauthorized Encroachment*, the *City* may give notice in writing to the *Owner* of the *Premises* to which an *Unauthorized Encroachment* is appurtenant, to forthwith remove, fill in or close up the *Encroachment* and to restore the *Public Lands* to their former condition at the *Expense* of the *Owner*.
- b) Where the *Notice* in subsection 13(a) is not complied with within thirty (30) days of the date of the *Notice*, the *City* may, on behalf of the *Owner*, remove, fill in or close up the *Unauthorized Encroachment* and restore the *Public Lands* to their former condition at the *Expense* of the *Owner*, such *Expense* to be recovered in full in the manner provided in section 14 below.
- c) Any material or structure forming part of or attached to the *Encroachment* and removed by the *City* may, at the discretion of the *Commissioner*, be relocated onto *Public Lands*, without compensation or deposited at the *Owner's Premises* or be stored for thirty (30) days at the *Owner's Expense*, such *Expense* to be recovered in full in the manner provided in section 14 below. Any item so stored and not claimed by the *Owner* within the said thirty (30) day period shall be disposed of by the *City* in such manner, as it deems appropriate and without compensation.

RECOVERY OF EXPENSES

14. a) All *Expenses* incurred by the *City* in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (30) days, at the discretion of the *City*, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the *Expenses* were billed.
- b) In the alternative, the *City* may also recover all expenses owing under this by-law by a court action as a debt due to the *City*.

INFRACTIONS AND PENALTIES

15. Every person who contravenes Section 10 of this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of *Expenses*, as provided for in the *Provincial Offences Act* of Ontario, as amended.

PROHIBITION ORDER

16. When a *Person* has been convicted of an offence under this by-law,
 - a) the Superior Court of Justice, or
 - b) any other court of competent jurisdiction,

may, in addition to any other penalty imposed on the *Person* convicted, issue an order prohibiting the continuation or repetition of the offence of the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

ENFORCEMENT

17. A *Municipal Enforcement Officer*, employee, servant or agent of the *City* acting under this by-law may enter and inspect all lands, buildings, structures or parts thereof that are subject to this by-law at any reasonable time with or without notice at the discretion of the *City* for the purposes of determining whether there is compliance with this by-law.

DELEGATION OF AUTHORITY

18. The Commissioner and/ or the City Clerk are authorized to execute and affix the Corporate Seal of the *City* to all Encroachment Agreements and where applicable to all Encroachment Permits.

GENERAL

19. In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

EXCEPTIONS AND GRANDFATHERING

20. a) Any *Encroachment* authorized under an *Encroachment Agreement* determined by the *City Solicitor* to be valid and binding at the date of enactment of this by-law, shall not require further authorization pursuant to this by-law until the *Encroachment Agreement* has expired or is terminated.
- b) Subject to subsection 20(b), this by-law shall apply to all Encroachments that existed or were created before this by-law was enacted and passed.

SEVERABILITY

21. Where a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid, or to be no force and effect, it is the intention of Council in enacting this by-law that the remainder of this by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

CONFLICT WITH OTHER BY-LAWS

22. Where there is a conflict or a contradiction between this by-law and any other by-law of the *City*, the provisions of this by-law shall prevail.

DELETIONS TO OTHER BY-LAWS

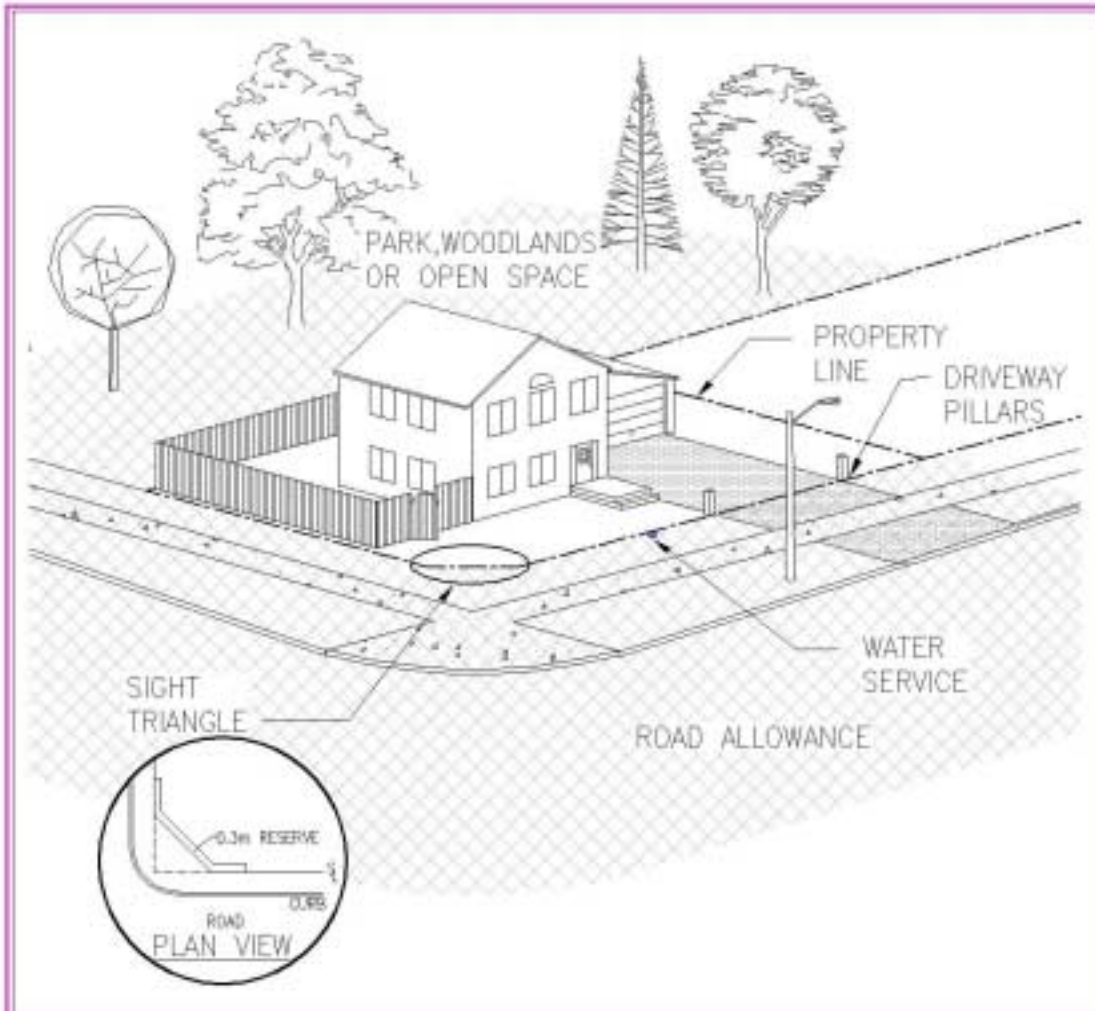
- 23. a) Highway and Boulevard Prohibitions, By-Law Number 358-86 is hereby repealed.
- b) Section 9, "*Vaughan Parks By-law*" of By-law 134-95, as amended is hereby deleted.

READ a FIRST, SECOND and THIRD time and finally passed this __ day of _____, 2005

Michael Di Biase, Mayor

J.D. Leach, City Clerk

SCHEDULE "A"



TYPICAL ENCROACHMENT AREAS

LEGEND



ENCROACHMENT AREA - PUBLIC LANDS



NON-ENCROACHMENT AREA - PRIVATE LAND



NOT TO SCALE

ATTACHMENT NO. 3

Application for Encroachment



DRAFT v3

The Corporation of the City of Vaughan
City Clerk's Department, Licensing
2100 Major Mackenzie Drive
Vaughan, ON L4A 1T1
905.880.4504
www.vaughan.ca

3.33

The personal information of this form is collected under authority of the Municipal Act, 2001, S.O. 2001, c. 25 and is protected under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 c. M.30. The information will only be used to evaluate applications for Encroachment Permits or Agreements. Questions about the collection of personal information should be directed to the City Clerk's Department.

Section A - Preliminary Inspection

Date of Request:	Assessment #: _____	Ward #: _____
Municipal Address of Property:		
Description of Encroachments: (Example: fence, retaining wall, garden plot, storage of materials, etc.)		
City Comments & Attach Photo(s):		
Removal Required: <input type="checkbox"/> Approved for Permit: <input type="checkbox"/> Approved for Agreement: <input type="checkbox"/> Already Authorized: <input type="checkbox"/> Not Applicable: <input type="checkbox"/>		
Enforcement Dept. Signature:	Badge #: _____	Date: _____
Departmental Signature:	Department: _____	Date: _____
Departmental Signature:	Department: _____	Date: _____

Section B - Application for Permit or Agreement (please read the back of this form)

Date of Application: _____		Permit Request: <input type="checkbox"/>		Agreement Request: <input type="checkbox"/>	
Full Name of Owner: Last Name: _____		First Name & Initials: _____			
Name of Applicant: / different from owner Last Name: _____		First Name & Initials: _____			
Mailing Address: / different from above					
Telephone No.:	Cell No.:	Fax No.:	Email Address:		
Brief Legal Description of Owner's Property: <i>Please attach copy of Deed and Registry Permit Register from the Land Registry Office.</i>					
Reason/ need of Encroachment: (Example: slope stability, recreational, etc.) if required attach letter					
Applicant's General Comments: (Explain any extenuating circumstances) if required attach letter					
Warranties By Applicant/ Owner: * All the information submitted with this application is complete, accurate, without omission and I have read the back of this form. Acknowledgement By The Applicant/ Owner: * Applicant/ Owner accepts all liability resulting from inaccuracies or omissions made herein. * Applicant/ Owner are familiar with the City's Encroachment By-law. * The application fee is non-refundable. * Applicant is responsible for all expenses associated with the application. * Subsequent inspections or amendments made to submitted applications shall result in additional inspection costs and fees as per the City's Encroachment By-law. * If the inspection requires removal, all unauthorized encroachments must be removed immediately.			* Applicant/ Owner accepts responsibility for any other necessary applications with the City of Vaughan, Region of York or other government agencies or bodies. * The City of Vaughan does not make any assurances regarding the length of time necessary to process this inspection/ application. * Acceptance of this application shall not fetter the City's authority under the Municipal Act or the Planning Act. * Survey quality sketch will have to be submitted if an Encroachment Permit or Agreement is approved. * The City of Vaughan may revoke any Encroachment Permit or Encroachment Agreement that has been issued as a result of false or misleading statements, or undertakings, in the application, or has failed to submit an updated insurance certificate, or has been issued in error. * All incomplete applications will be returned unprocessed.		
Applicant's Signature: _____			Date: _____		

3.34

Please read the following carefully.

Encroachment Permits or Encroachment Agreements.

- Simple encroachment** means a minor encroachment as determined by the City and if approved, must execute and pay all expenses for an Encroachment Permit from the City, whereas a **Complex encroachment** means a major encroachment as determined by the City and if approved, must execute and pay all expenses for a detailed Encroachment Agreement from the City which may require registration against title in the land registry office.
1. If the applicant does not own the property to benefit from the encroachment, the applicant must enclose an affidavit (3 original copies) signed by the registered property owner stating to the fact that the applicant is authorized to represent the property owner.
 2. If the owner is a Corporation, please enclose (5 copies) of the Articles of Incorporation (or Letters Patent).
 3. If the owner is a Partnership, please enclose (3 copies) of the partnership registration from the Province of Ontario.
 4. Please prepare and enclose 5 legal size (8.5 x 14 paper) copies of a detail drawing depicting your property boundaries, the City's property boundaries and the size and location of the item(s) encroaching onto the City's property. This drawing is typically prepared on your behalf by an Architect and/or Legal Surveyor, OLS.
 5. Depending on the nature and extent of the encroachment involved, City Staff may require that you enclose a written contractor's estimate detailing the costs to be incurred if removal of the encroachment is necessary.
 6. If the applicant's property is subject to any other notices, citations, orders or permits issued by the City of Vaughan, Region of York or any other government agencies or bodies having jurisdiction, please enclose complete copies including any corresponding application numbers.
 7. If this application is being submitted as a result of a Notice received from the City's Enforcement Services Department, please enclose copies of all correspondence relating to that Notice.
 8. If your application is approved, you will be required to obtain and maintain an insurance policy in the minimum amount of \$2,000,000.00 naming the City as an additional named insured party.

City of Vaughan Use Only:

Clark's File No.:	Encroachment File No.:	Realty File No.:	Department(s) File No.:
Name/ description/ legal description of City land and Park Number if applicable:			
Application Checklist:			
* Completed Application form, signed and dated? <input type="checkbox"/>		* Affidavit or agent authorization letter, signed by the owner, if applicant is not the owner? <input type="checkbox"/>	
Photocopy of Deed to property? <input type="checkbox"/>		* Articles of Incorporation or Letters Patent, if property owner is a corporation? <input type="checkbox"/>	
Five (5) OLS professional quality copies of a drawing showing the encroachment and dimensions as per the attached example? Readable hand-drawn renderings on original survey are acceptable for Encroachment Permits. <input type="checkbox"/>		* Partnership Registration Form, if property is held by a partnership? <input type="checkbox"/>	
* Payment of Non-refundable application fee? <input type="checkbox"/>		Property Parcel Registered for property from the Land Registry Office, Encroachment Agreement Only? <input type="checkbox"/>	
Insurance Certificate submitted? <input type="checkbox"/>			
* These items are required before application can be accepted and circulated			
Non-refundable Application Fee:			
Staff Signature _____		Fee Received Date: _____	
Application circulated to:			
<input type="checkbox"/> Public Works	<input checked="" type="checkbox"/> Planning		
<input type="checkbox"/> Parks	<input type="checkbox"/> Other Department _____		
<input type="checkbox"/> Real Estate	<input type="checkbox"/> Outside Agencies (specify) _____		
<input type="checkbox"/> Engineering	<input type="checkbox"/> City Manager's Office		
<input type="checkbox"/> Enforcement Services	<input type="checkbox"/> Local Councillor's Office		
Encroachment Permit Approval:			
This permit is issued exclusively for the current owner and only for the encroachment identified on this application and is subject to the applicant/owner complying with any other conditions herein set forth. Notwithstanding the issuance of this permit, the City reserves the right to amend the conditions and/or cancel the Encroachment Permit at the City's sole discretion, at any time with or without notice. The permit is non-transferable or non-assignable and shall terminate with the change of ownership, or the sale of the owner's property, or until application is made for development of the owner's property, or until the encroachment is required for municipal purposes, or as a result of false or misleading statements, or undertakings, in the application, or has failed to submit an updated insurance certificate within thirty (30) days of its expiry date, or has been issued in error.			
Additional Conditions:			
Issuer's Signature _____		Date: (day/ month/ year) _____	
Permit Number Issued:			

Encroachments are a PROBLEM

What is an Encroachment?

An encroachment is any type of vegetation, man-made object or item of personal property of a person which exists wholly upon, or extends from a person's premises onto, public lands and including any aerial, surface or subsurface encroachments, either deliberately or inadvertently. Encroachment results from any use of City owned land by individuals or businesses for their own purposes.

The By-Law

Encroachments are illegal under By-Law 0057-2004.

No person shall erect, place or maintain, or cause to be erected, placed or maintained, an encroachment of any kind on public lands, or on any right-of-way or easement in favour of the City, except where permitted to do so in accordance with this by-law.

How do I report an Encroachment?

To report encroachments in *City Parks or greenspace*, please contact:

Parks at 905-615-4100

To report encroachments *within the road allowance*, please contact:

Works at 905-615-3033

For more information about the *Encroachment By-law*, please contact

By-law Enforcement at 905-895-5655

Next steps...

Where the City becomes aware of an unauthorized encroachment, the City may give Notice in writing to the owner of the premises apparently responsible for the unauthorized encroachment. The Notice will require the owner to remove, fill in or close up the encroachment and to restore the public lands to their former condition at the expense of the owner.

Where the required action to remove the encroachment is not completed within the timeframe stipulated on the Notice, the City may, on behalf of the owner, remove, fill in or close up the unauthorized encroachment. The City will restore the public lands to their former condition at the expense of the owner, and any expenses will be recovered from the owner.

Any materials or structures forming part of or attached to the encroachment and removed by the City may either be deposited at the owner's premises or be stored for thirty (30) days at the owner's expense. Any items so stored and not claimed by the owner within the thirty (30) day period will be disposed of by the City in such manner as it deems appropriate.

Authorized Encroachments

In certain circumstances, the City may agree that an adjacent property owner may be permitted to use City property. An Encroachment Agreement may be sought through an application process. City staff will review the application to determine whether the encroachment onto public lands can be tolerated. The application is subject to a non-refundable fee, and may be obtained from the Realty Services Section. For further information call 905-896-5428.



Are encroachment on property



Encroachments on City property

The unauthorized use of City property is illegal. Some examples of illegal encroachments include:

- Play structures including sand boxes, gyms, playhouses, swings, slides and tree houses.
- Stairs, railings, patios, down spouts, lighting, bug zappers, decks and recreation structures (volleyball nets etc.), deck footings and paved surfaces.
- Unauthorized pathways (paved or unpaved).
- Vehicles parked on public land offered for retail sale.
- Fence gates to access storm water management areas or parkland.
- Garden/storage shed, trailers, campers, boats and building materials (wood/bricks/blocks, etc.).
- Garden composters (plastic/wood/concrete).
- Flower beds, vegetable gardens and irrigation systems.
- Unauthorized mowing, cutting, pruning, watering and removal of: grass/turf, ground cover, wildflowers, shrubs and trees.
- Unauthorized application of pesticides on City property by adjacent property owners.
- Dumping/storage of leaves, brush and garden waste (fire hazards).



Play structure



Fences, private use, damage to City trees



Retail parking damages grass and tree roots by compacting the soil, and reduces the City's ability to perform regular maintenance

The effects of encroachments

The City of Vaughan is concerned with encroachments on public lands for the following reasons:

- **Public Safety**
- **Environmental Damage:** Encroachments can damage the natural environment and cause irreparable damage to ecologically sensitive ecosystems. The City acts on behalf of the residents as stewards of all public lands to ensure the natural features are protected.
- **Restoration Costs**

The City carries out various maintenance activities throughout the year within the road allowance. These activities include sidewalk and curb repair, road surface maintenance, snow plowing and roadway and sidewalk sweeping.

Driveway curbs, ornamental walls, hedges or fences should be kept three feet behind the sidewalk or roadway to ensure that maintenance activities can be carried out safely. The City cannot accept any responsibility for damage caused to items placed on City property.

Encroachments may increase costs to the taxpayer for removal of encroachment and restoration of public lands.

- **Protection of Public and adjacent private property**

Encroachments restrict or limit the use and enjoyment of public lands which are maintained by the City for the benefit of all its residents. Property owners who encroach on public lands will be held responsible for any claims resulting in bodily injury or property damage related to the encroachment.

- **Protection of Public Access**

Encroachments reduce the parkland available to the general public.

The City support i encroach

Encroachm
www.vaugh

Backyard garden



Storage and/or



Recreational str



