



Report to: General Committee

Date Report Authored: June 20, 2014

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**SUBJECT:** Right of Maintenance Access By-law  
**PREPARED BY:** William Wiles, Ext. 4851

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**RECOMMENDATION:**

- 1) That the report entitled “Right of Maintenance Access By-law” be received; and,
- 2) That Appendix ‘A’ - Right of Maintenance Access By-law be enacted; and,
- 3) That staff prepare and publish information on the Right of Maintenance Access By-law and By-law processes for dissemination on the Portal and for distribution by field staff ; and,
- 4) That staff report back within 1 year of Right of Maintenance Access By-law implementation; and further,
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE**

The purpose of this report is to enact a by-law authorizing the owner or occupant of land to enter adjoining land for the purpose of making repairs or alterations.

**BACKGROUND**

At the January 14<sup>th</sup>, 2014 Development Services Committee meeting, staff were questioned if maintenance easements or other remedies were available for property owners to access neighboring properties for maintenance and repair purposes. Committee was advised that staff would report back on the current situation and any remedies available to property owners.

**OPTIONS/ DISCUSSION**

Current Situation

A property owner does not have the right to enter onto adjoining properties to maintain their property or buildings and structures on their property such as fences, retaining walls, buildings etc.

There are three ways a property owner can legally access adjoining property to conduct repairs and maintenance:

- 1) With the consent of the adjoining neighbor;
- 2) Through a registered easement over the adjoining property (this type of easement commonly exists between the interior yards of townhouses and semi-detached houses built since the 1980s.); or
- 3) By obtaining a court order.

Traditional development standards and community design practices typically provide adequate set-backs and avoid plans that entail the placement of buildings, retaining walls or other improvements on the property line. These standards exist partially to avoid owners from having to access the adjoining property to conduct maintenance and repair work. However, new urbanism developments (laneway based housing) and developments that predate the 1980s do not always reflect these typical development standards and design practices. These types of buildings are designed in a way where obtaining access to the adjoining property is sometimes required to conduct maintenance and repair work.

City staff is increasingly being contacted by residents who have not been able to obtain legal access to an adjoining property to conduct repairs and maintenance. It has also become more common for properties to be owned by a party that does not reside at the property. When the owner is absent or cannot be contacted, the party who is seeking access cannot obtain their permission.

In the absence of a registered easement or permission from the owner of the adjoining property, the only legal alternative for a party seeking to gain access is to commence a civil action through the courts to obtain a court order. Commencing such an action is costly and time consuming as they would require legal representation.

In light of the above, staff recommend that a “Right of Maintenance Access By-law” be enacted to provide a less costly and time consuming alternative to residents for obtaining legal access to the adjoining property for conducting maintenance and/or repair work.

#### Legislative Authority

Section 132 of the Municipal Act, 2001 provides a municipality with the authority to enact a by-law authorizing the owner or occupant of land to enter onto adjoining land for the purposes of maintenance or repairs to the land of the owner or occupant. Access is only provided to the extent necessary to carry out the repairs or alterations. The following conditions apply to the power of entry under a by-law enacted under section 132:

- 1) Entry may be by an employee, agent, contractor of the owner/ occupant;
- 2) Persons making entry must produce/ display identification upon request;
- 3) No entry into a building is permitted;
- 4) Reasonable notice must be provided; and,
- 5) Lands must be restored to its original condition and compensation must be provided for any damages.

There are currently six Ontario municipalities that have right-of-entry by-laws similar to that being recommended for Markham: Toronto, Ottawa, Windsor, Hamilton, Oshawa and London. The Toronto, Ottawa, and Windsor by-laws require the party seeking access to apply for and obtain a permit from the municipality to authorize the entry.<sup>1</sup> As part of the permit process, the applicant may be required to provide proof of insurance, reasons

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<sup>1</sup> The permit requirement is more common in municipalities with larger urban centers, likely because there are more multi-story buildings and properties with zero lot lines, parties require access to adjoining properties more frequently and the issues related to gaining access may be more complicated.

for the access, and other details. Based on staff's research, the administration of a permit system is quite problematic and time consuming. As such, staff are not recommending a similar permitting process in Markham.

Proposed Markham Right of Maintenance Access By-law

Under the proposed Right of Maintenance Access By-law for Markham (see **Appendix "A"**), a property owner wishing to gain entry to an adjacent property to conduct repair and maintenance work shall provide the owner of the adjacent land with forty-eight (48) hours prior written Notice of his or her intention to enter. The Notice shall specify when entry will occur and the length of time that will be necessary to enter upon the land. The notice shall also include a certificate of insurance to evidence that the owner or contractor doing the work has the insurance coverage required in the by-law. It shall also include a signed statement from the party seeking entry that he or she shall comply with the requirements contained in the by-law.

Similar to the City's Fence By-law, the City will have a limited enforcement role under the proposed Right of Maintenance Access By-law.<sup>2</sup> More specifically, the City will not enforce the By-law when the access is denied. Instead, the proposed By-law creates an offence that the owner can use to undertake civil action against the other party. City staff will, however, provide guidance on how to undertake the process and written instructions will be on Markham's Portal.

**FINANCIAL CONSIDERATIONS AND TEMPLATE**

Not Applicable

**HUMAN RESOURCES CONSIDERATIONS**

Not Applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES**

Growth Management

**BUSINESS UNITS CONSULTED AND AFFECTED**

Legal, Building, Planning

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<sup>2</sup> The City's Fence By-law provides a similar notification process. Under the Fence By-law, the person building the fence is required to notify the adjoining owner in advance of the new fence and then to request payment upon completion. Enforcement of the cost sharing component of the Fence By-law is undertaken by the resident themselves. The City is not involved except to provide guidance to owners on how to undertake the process.

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**RECOMMENDED BY:**

20/06/2014

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Kimberley Kitteringham  
City Clerk

20/06/2014

X



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Trinela Cane  
Commissioner, Corporate Services

**ATTACHMENTS:**

Appendix 'A' - Right of Maintenance Access By-law