

Date: 2024-01-17

Subject: **Information Report: City-Initiated By-Law - Right of Entry for Maintenance**

Contact: Noel Cubacub, Development Planner III, Planning, Building & Growth Management
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Report Number: Planning, Bld & Growth Mgt-2024-045

Recommendations:

1. That the report from Noel Cubacub, Development Planner III, Planning, Building and Growth Management to the Planning and Development Committee Meeting of February 12th, 2024, re: **Information Report – City-Initiated By-Law: Right of Entry for Maintenance**, be received, and;
2. That Planning and Development Services staff be directed to report back to the Planning and Development Committee with the results of the Public Meeting and draft “Right of Entry for Maintenance” by-law.

Overview:

- In 2022, the Planning, Building, and Growth Management department engaged in a Development Application End to End Review to identify opportunities to create greater efficiency and effectiveness in service delivery while improving development application processing timelines.
- A report was prepared and recommended that City of Brampton adopt successful practices from other municipalities. One practice being the removal of the need to create maintenance easements through a “Right of Access for Maintenance” By-Law.
- The purpose of this report is to present information to the public and the Committee comparing the City’s current process in creating maintenance easements and the proposed strategy of enacting a “right of entry” by-law allowing landowners to access adjoining lands.
- The overall purpose and function of a City-wide “Right of Access for Maintenance” By-law would be to eliminate the need to create maintenance easements through the City’s various development application processes while also reducing financial and time-consuming burdens on residents and applicants.

Background:

In 2022, the Planning, Building, and Growth Management Department engaged in a Development Application End-to-End Review to identify opportunities to create greater efficiency and effectiveness in service delivery. The purpose of that review was to improve development application processing times while maintaining legislated requirements and excellence in customer service.

The outcome of the review was a report that outlined the current state of affairs as well as a desired future state for the development application review process to be achieved through a series of recommendations set out in the report. The report is a representation of both quantitative and qualitative data received from internal staff members associated with the review processes and the City's "customers" – residents, consultants and developers that submit development applications.

The report included a "Voice of the Customer" (VOC) section detailing feedback from the City's customers, both positive and opportunities for potential improvement. One of the opportunities for improvement identified was to eliminate potentially non-value added tasks, such as the creation of maintenance easements.

This report presents information for a public meeting for a by-law being proposed to fulfill that recommendation by establishing a right of entry for people to enter onto their neighbour's property to perform maintenance on their own property.

Current Situation:

Property owners often need to gain access to a portion of an adjacent property in order to be able to perform maintenance on their property or dwelling. An example of this is when a property owner needs to erect a ladder along the side of their house in order to be able to access the side of the dwelling or the roof. Because there is often minimal depth in a side yard (often only 0.6m or 1.2 metres) it is necessary for the bottom of the ladder to be placed in the neighbouring property. Despite this, a property owner in Brampton currently does not have an inherent right to enter onto an adjacent property to maintain their property, or buildings and structures on their property.

Presently, there are three ways a property owner can legally gain access to an adjoining property to conduct repairs and general maintenance:

1. With the consent of the adjoining neighbour;
2. Through registered legal access easements over an adjacent property (this type of easement commonly exists along the interior side lot lines for townhouses and semi-detached houses built within the last 40 years); or
3. By obtaining a court order.

Maintenance easements on adjoining properties are not always necessary to conduct repairs or maintenance on an owner's property. However, it is important to acknowledge that recent housing development practices and typologies have shifted towards more compact forms such as back-to-back towns, stacked towns, etc. These types of buildings are often designed in a way where access to the adjoining property is sometimes required to conduct maintenance and repair work.

The City offers services to create easements, particularly maintenance easements. A maintenance easement can be created through a variety of planning development applications, most notably being Exemption from Part-Lot Control, Draft Plans of Subdivision/Condominium, as well as Consent (severance) through the Committee of Adjustment. However, it should be noted that the Exemption from Part-Lot Control application is the only application type that is generally submitted solely for the purpose of creating maintenance easements.

These applications can add additional financial and time-consuming burdens on residents and the development community to achieve legal access to the adjoining property for conducting maintenance and/or repair work.

Exemption from Part-Lot Control Applications

In the *Planning Act*, "Part-lot Control" is a regulatory framework designed to oversee the division of land within a plan of subdivision. It also regulates the transfer or sale of a lot or block within a registered plan of subdivision. An Exemption from Part Lot Control application accommodates a by-law being passed by Council to temporarily (often 3 years) remove part-lot control from all or any part of a registered plan of subdivision to:

1. facilitate the division of blocks on registered plans of subdivision into townhouse, or semi-detached dwelling unit lots,
2. facilitate the subdivision of commercial and industrial blocks on registered plans of subdivision, or,
3. facilitate the creation of maintenance easements.

The process of reviewing an application for exemption of part-lot control, preparing the By-law and presenting it to Council typically takes about 6 weeks after confirmation of a complete application. In addition, the application carries a base fee of \$3,051.00.

Staff are seeking direction to explore and develop a City-wide "Right of Entry for Maintenance" By-law that provides for a less costly and time-consuming alternative for residents and developers to obtain legal access to the adjoining property for conducting maintenance and/or repair work, as well as creating efficiencies across multiple City departments.

Proposed Right of Entry By-law

Section 132 of the *Municipal Act, 2001* provides a municipality the basis to enact a by-law authorizing the owner or occupant (or agent thereof) of land to enter adjoining land for the purpose of making repairs or alterations to a building, fence, or other structures on the land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations. The Act also stipulates that the following conditions are applicable to the power of entry under a by-law enacted under section 132:

1. The power of entry may be exercised by an employee or agent of the owner or occupant of land;
2. A person exercising the power of entry must display or, on request, produce proper identification;
3. Nothing in a by-law under this section authorizes entry into a building;
4. The owner or occupant shall provide reasonable notice of the proposed entry to the occupier of the adjoining land; and
5. The owner or occupant of land shall, in so far as is practicable, restore the adjoining land to its original condition and shall provide compensation for any damages caused by the entry or by anything done on the adjoining land.

Staff have examined seven municipalities in Ontario that have right-of-entry bylaws similar to that being explored, including Toronto, Ottawa, Windsor, Hamilton, Oshawa, London, and Markham. Some by-laws, like that of Toronto, Ottawa and Windsor require the landowner to apply for and obtain a permit from the municipality to authorize the entry. The remaining municipalities do not create additional administrative requirements such as fees, permit applications, or municipal regulation.

Attachment 1 outlines a comparison of the seven noted municipalities that have enacted similar by-laws. Staff have contacted appropriate staff members at each municipality requesting feedback on the implementation of their respective by-laws. In Attachment 1 staff have taken identified key takeaways and findings that would be accounted for in the creation of a made-in-Brampton by-law from that research.

Subject to the direction of Council, staff will develop a right of entry by-law for its consideration that incorporates the noted research and feedback from this public meeting. The by-law will include stipulations consistent with the conditions under Section 132 of the *Municipal Act* and may include further rules and regulations related to: notice of entry (time and duration); permitted works; exclusions and restrictions; and restoration of land.

Staff note that key internal stakeholders, such as Legislative Services, Risk Management, and Building, would be involved in drafting the by-law.

Corporate Implications:

Financial Implications:

Financial implications related to the Right of Entry By-law and the changes to the current processes will be addressed in a future Recommendation Report.

Other Implications:

Other technical planning and development implications, as well as those brought forward by members of the public, associated with this proposal will be undertaken and discussed within the forthcoming Recommendation Report.

Living the Mosaic – 2040 Vision

This report has been prepared in full consideration of the overall Brampton 2040 Vision.

Strategic Focus Area:

This report aligns with and furthers the Strategic Focus Area of Government & Leadership by way of creating avenues for efficiency, both internally and externally, as well as showcasing transparent information sharing and decision making.

Conclusion:

A future Recommendation Report will detail the results of this public meeting and bring forward a draft “Right of Entry for Maintenance” by-law.

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Attachments:

- Attachment 1: Municipal Benchmarking
- Attachment 2: Information Presentation: City-Initiated By-Law – Right of Entry for Maintenance