



Report
Staff Report
 The Corporation of the City of Brampton
 6/17/2024

Date: 2024-05-23

Subject: **Recommendation Report – City Initiated By-law: Right of Entry for Maintenance (Friendly Neighbour By-law)**

Contact: Noel Cubacub, Planner III, Planning, Building and Growth Management

David VanderBerg, Manager Planning, Building and Growth Management

Report number: Planning, Bld & Growth Mgt-2024-466

RECOMMENDATIONS:

1. That the report from Noel Cubacub, Planner III, Planning, Building and Growth Management to the Planning and Development Committee Meeting of June 17, 2024 re: **Recommendation Report – City Initiated By-Law: Right of Entry for Maintenance (Friendly Neighbour By-Law)**, be received; and
2. That the by-law “A By-law to Allow for Entry onto Adjoining Lands for Maintenance (Friendly Neighbour By-law)”, as generally set out in Attachment “1”, be enacted.

OVERVIEW:

- The Planning, Building, and Growth Management Department initiated a review in 2022 to streamline development application processes and improve efficiency, with one recommendation suggesting the elimination of maintenance easement requirements by way of a “Right of Entry for Maintenance” By-law.
- A “maintenance easement” is a legal document that provides a person the right to access the portion of their neighbour’s property that is subject to the easement, so that they are able to complete maintenance work on their own property. An example of this is when a residential landowner needs to put the bottom of a ladder on a neighbouring property so that they can access the second floor of their house, where their own side yard is not big enough to accommodate the ladder.

- **Currently, the City administers the creation of maintenance easements through the Exemption from Part-Lot Control (PLC) application process. This proposed Right of Entry for Maintenance By-law would eliminate the need to administer the costly and lengthy PLC process to create maintenance easements. It would allow for people to generally enter onto a portion of their neighbor's property if required to do routine maintenance on their own property, with restrictions included requiring proper notification and ensuring no damage being done to the neighbour's property.**
- **On February 12, 2024, the Planning and Development Committee held a public meeting on the proposed by-law. No one attended the meeting and two letters in support of the proposed by-law were received.**
- **This report recommends the enactment of a new City-wide by-law that will allow property owners, residents, and agents thereof, to enter onto portions of adjoining lands for the purpose of conducting maintenance – as defined in the by-law.**
- **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.**
- **The recommendation of enacting the by-law will result in an estimated annual reduction of \$30,000 in development application fees; however those fees were arranged to solely cover the City's processing costs. In this respect the fees and costs will offset each other. The expected revenue loss and subsequent operational savings will be reflected in future budget submissions and presented to the Mayor for his consideration.**

BACKGROUND:

In 2022, the Planning, Building, and Growth Management Department undertook a review to enhance efficiency in development application processes while maintaining service excellence. The resulting report synthesized input from internal staff and external stakeholders, outlined current practices and proposed future improvements, including the elimination of non-essential tasks like creating maintenance easements.

On February 12, 2024, staff held a statutory public meeting and presented information to the Planning and Development Committee on by-laws that were enacted by various other Ontario municipalities. These by-laws allow for residents to gain access to adjoining properties for the purpose of conducting maintenance – either through obtaining a permit or as-of-right permissions.

The Committee was advised that staff would report back with the results of the public meeting as well as a draft “Right of Entry for Maintenance” by-law for the Committee to consider and enact city-wide.

CURRENT SITUATION:

Property owners sometimes need to gain access to a portion of an adjacent property to be able to perform maintenance on their property or dwelling. An example of this would be when a property owner of a single-detached dwelling sometimes needs to place the base of a ladder on their neighbour’s property in order to be able to access the side of their own building or roof for routine maintenance or repair. However, a property owner in Brampton currently does not have an inherent right to enter onto a portion of an adjacent property to maintain their own property.

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

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.

Exemption from Part-Lot Control Applications

The City currently regulates the creation of maintenance easements through a variety of planning applications, with “exemption from part-lot control” applications being the most common application type used to create them.

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

The goal of the proposed by-law would be eliminating the onerous and costly need to apply for creating maintenance easements through the exemption from part-lot control process. Below is a summary of the number of applications the City received solely for the creation maintenance easements.

Year	No. of Applications	Total Approx. Staff Hrs*	Base Fee By Year	Fees Collected
2019	7	28	\$1,337	\$9,359.00
2020	17	92	\$1,365 - \$1,705	\$16,368.00
2021	23	23	\$1,739	\$22,847.00
2022	17	68	\$1,809 - \$2,225	\$34,913.00
2023	11	44	\$2,959	\$32,549.00

Note The approximate staff hours are based on an internal scan of the departments that review PLC applications that create maintenance easements (Development Engineering: ~30 minutes; Development Services: ~90 minutes; Zoning: ~30 minutes per application, and Legal Services: ~90 minutes)

Municipal Act Basis for Right of Entry By-laws

Section 132 of the *Municipal Act, 2001*, provides a municipality the authority 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 repairs or alterations. Section 132 also provides provisions that would need to be met to utilize the right of entry.

Results of the Public Meeting

A public meeting is not required for a Right of Entry By-law as it is being enacted under the *Municipal Act*, however, a public meeting was held (February 12, 2024) to receive any public input, answer any questions, and to provide background information to the public and the Committee. Notice of the public meeting was published on the City's "Let's Connect" webpage and the Brampton Guardian on January 19, 2024. There were no members of the public that made representation before the Planning and Development Committee.

Members of the development community have submitted letters of support with regards to the proposed by-law noting that this would result in both time and cost savings. These letters can be found in Attachment 2.

Recommended By-law

Staff are recommending that the City of Brampton adopt a Right of Entry by-law, as generally included in Attachment 1, that will allow property owners, residents, and agents thereof, to enter onto adjoining land for the purpose of conducting maintenance. Staff conducted a review of Ontario municipalities that have enacted a similar by-laws and this review informed the recommended provisions to be included in the proposed by-law. Information on the by-laws that were reviewed for consideration can be found in Attachment 3.

The by-law includes the provisions provided in Section 132 of the *Municipal Act* as well as expanded provisions that staff found appropriate and in keeping with the Act, including:

- Notice must be provided to the neighbour detailing the nature of the work, its start and duration and as well as who will be carrying it out.
- Duration of the entry shall not exceed the time reasonably required to diligently and expeditiously complete the maintenance.
- The right of entry is limited to the extent necessary to carry out the repairs or alterations.

- The person entering their neighbour's property must restore it to its original condition, including removing any equipment or materials.
- In the event damage is done, which is expected to be rare, compensation is to be provided for the damage.
- Provisions that ensure that an owner's/occupants/lessee's civil rights are preserved and that no person utilizing the by-law is exempt from other applicable federal, provincial, or local laws.

The proposed by-law is written in a way that allows for "as-of-right" permissions and will not require the application for, or issuance of, any additional permits to conduct the maintenance work. The by-law does not allow for entry into any buildings or structures on an adjoining neighbour's property.

The proposed by-law outlines exactly how one would use the by-law for the specific purpose of making repairs or alterations to any building, fence, or structures situated on the land of the owner or occupant seeking to enter a neighbouring property. Key definitions are indicated in the by-law that provide clarity as to who may utilize the by-law as well what qualifies as maintenance.

Staff recommends enactment of the by-law because it would simplify the development approval process and make it easier for residents to maintain their properties. The current processes have the potential to frustrate both land developers looking to build and sell homes as well as residents who are seeking to update and upkeep their home. There is also a benefit to the City in that resources currently being used to administer the exemption from part-lot control can be utilized elsewhere.

CORPORATE IMPLICATIONS:

Financial Implications:

The recommendation of enacting the by-law will result in a reduction to the amount of development application fees received by approximately \$30,000. However, that fee was arranged to be sufficient to only cover City processing costs of exemption to part-lot control applications – which would now no longer be processed. The expected revenue loss from the elimination of the maintenance easement applications and subsequent operational savings will be reflected in future budget submissions and presented to the Mayor for his consideration.

Communications Implications:

As a means of providing information on the by-law to the public staff will update the City's website to include all the information an owner, occupant or agents would need to act in accordance with the proposed by-law.

Other Implications:

There are no other Corporate implications associated with the applications.

STRATEGIC FOCUS AREA:

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:

The City is actively exploring new methods to enhance efficiency in development application processes while maintaining service excellence. This report recommends approval of a new City-wide by-law that would allow residents to conduct routine maintenance on their property while also removing costly and time-consuming administrative burdens.

Authored by:

Reviewed by:

Noel Cubacub
Planner III
Planning, Building and Economic
Development

Allan Parsons, MCIP, RPP
Director, Development Services
Planning, Building and Growth
Management

Approved by:

Approved by:

Steve Ganesh, MCIP, RPP
Commissioner
Planning, Building & Growth
Management

Marlon Kallideen
Chief Administrative Officer

Attachments:

- Attachment 1 – A By-law to Allow for Entry onto Adjoining Lands for Maintenance
- Attachment 2 – Results of Public Meeting
- Attachment 3 – Municipal Benchmarking - Right of Entry By-laws

