

Date: 2021-09-16

Subject: Staff Report to Council- Background of Hedge Encroachment-147 Ecclestone Drive and Delegation by Owner to the September 8, 2021 meeting of Committee of Council, (Escribe #2021-1038 and RS File# EN21-121), Ward 1, to the Council meeting of September 29, 20

Contact: Marlon Kallideen, Acting Senior Manager, Realty Services

Report Number: Community Services-2021-1038

Recommendations:

That the Staff Report to Council- Background of Hedge Encroachment-147 Ecclestone Drive and Delegation by Owner to the September 8, 2021 meeting of Committee of Council, (Escribe #2021-1038 and RS File# EN21-121), Ward 1, to the Council meeting of September 29, 20, be received and; that the Owner be directed to remove the hedge in its entirety due to its location and height.

Overview:

- The encroachment consists of a fully enclosing hedge that was planted on the City's right-of-way immediately adjacent to the sidewalk ("Appendix A"). There is no set back and as per the pictures provided by Bylaw and Enforcement on March 17, 2021, the hedge overhangs the sidewalk ("Appendix B").
- The hedge also surrounds a Canada Post community mailbox.
- A review of City mapping (AIM's) confirms that the hedge has been in place since pre 2004.
- The encroachment was brought to Realty Service's attention on March 17, 2021 by Bylaw and Enforcement.
- Realty Services Staff ("Staff") initiated contact with the owner on April 26, 2021 to advise of the encroachment and the options for resolving the

matter, either to remove the encroachment or to contact Staff to discuss options for retaining the encroachment.

- **On or about May 3, 2021, Staff communicated to the owner the requirements to keep the encroachment, subject to a review by the City's Risk & Insurance and Road Operation Divisions.**
- **The owner was not in agreement with the City's requirement and advised that they would be contacting their lawyer for advice.**
- **In July 2021, Staff were advised that the owner intended to delegate to Committee of Council to make a request to retain the encroachment in the absence of an Agreement.**
- **The owner then delegated to the September 8, 2021 Committee of Council Meeting, and Council requested Staff to report back with additional information.**

Background:

Bylaw and Enforcement forwarded the encroachment matter to Realty's attention on March 17, 2021. The complaint was for the hedges overhanging the sidewalk.

On March 18, 2021, Realty Services Staff ("Staff") advised Bylaw and Enforcement through email that there was no agreement with the owner.

On March 22, 2021, Staff coordinated circulation of the encroachment to Risk & Insurance, Road Operations and Traffic Operations for their review and direction as to whether an encroachment agreement would be supported. Traffic Operations was engaged to provide direction from a traffic perspective whether the hedge posed any sightline issues from a vehicular position only.

The initial comments received from Risk & Insurance and Road Operations after a review of the encroachment were as follows:

Risk & Insurance:

- Expressed significant concerns with the Community Mail Box and the encumbrance residents experience when retrieving their mail. *"This is particularly important should anyone have mobility issues, especially during the winter months."*
- The hedge sits *"high enough and close enough to the sidewalk that drivers exiting the driveway at 147 Ecclestone Drive as well as the neighbour's driveway have an obstructed view of the sidewalk. This poses a risk if a cyclist or pedestrian was passing by as a car was exiting either driveway"*.

- Would prefer to see the hedge altered/trimmed to meet the requirements outlined by Road Operations.

Road Operations:

- The face of the hedge is to be trimmed back so as to not overhang the sidewalk (minimum offset to face of hedge to 0.6m);
- The height of the hedge be reduced to 0.75m; and
- Any sight line issues (backing in and out of driveway) are eliminated by maintaining a minimum offset to edge of driveway of 1.8m.

Traffic Operations:

“The distance between the edge of Ecclestone Drive and the hedge is greater than 4.5 metres and meets line of sight requirements relating specifically to access to the roadway. As such, Traffic Operations does not view it as a sightline concern specifically related to access for the driveway to the roadway.”

Communications with the Resident:

In accordance with the City’s Standard Operating Procedure for Encroachment Regularization (“SOP”), Staff sent a letter to the owner on April 26, 2021 advising the encroachment issue and outlined the steps required for the encroachment to remain, subject to an encroachment agreement with the City. A response was requested by June 11, 2021.

The resident contacted Realty Services on or about May 3, 2021 wherein Realty Staff once again advised the resident of the requirements to keep the encroachment, subject to a review by the City’s Risk & Insurance and Road Operation Divisions, being the following:

- Complete of the Encroachment Application and submit the required fee;
- Enter into an Encroachment Agreement with the City and payment of the required Encroachment Charge (However, upon further review by City Staff, it was confirmed by City Aerial Photos (AIM mapping) that the hedge has been in place since pre 2004, and in accordance with the City’s Bylaw 224-2014, the Encroachment Charge would be waived);
- Provide proof of insurance on the City’s standard form, on an annual basis in the amount of \$1,000,000 that the City has been added as an additional insured to their home owners insurance policy; and
- Register the Encroachment Agreement on title to their property, once the Encroachment Agreement is fully executed and provide the City with a copy of said registration within 30 days of execution of the Encroachment agreement. This would require the Owner to retain a lawyer at their sole cost and expense to complete.

The owner was not receptive to the requirements and indicated to Staff that they would be contacting their lawyer to further discuss the matter.

On the same date, May 3, 2021, Bylaw and Enforcement provided pictures indicating that although the hedge has been trimmed down since the last visit, it still remained on the City's property.

Conclusion

Following further review of the encroachment matter, staff have determined that the encroachment cannot remain. The decision to remove the hedge is due to concerns with the location being immediately adjacent to the City's sidewalk as well as the height. These concerns relate to pedestrian and cyclist safety and the ability for the City to undertake maintenance of the sidewalk and right-of-way, which includes but is not limited to winter operations.

Corporate Implications:

Financial Implications: None.

Other Implications: None.

Term of Council Priorities:

This report supports the Term of Council Priorities and the 2040 Vision.

Through stewardship of assets and services, and a focus on service excellence, this report demonstrates that Brampton is a Well Run City.

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Attachments:

Appendix "A"-Aerial of Encroachment in relation to property lines of 147 Ecclestone Drive.

Appendix "B"- Pictures of Hedge Encroachment.