

Right to Enter Adjoining Land to Make Repairs

To recommend a new City-wide by-law to permit owners to enter adjoining properties for the purpose of making repairs or alterations to their own property.

Date:	October 19, 2007
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	2957

SUMMARY

Staff recommend that a City-wide by-law be adopted to provide the right to enter adjoining land for the purpose of making repairs and alterations.

As required by section 101 of the *City of Toronto Act, 2006*, the by-law provides for notice requirements, limits entry to the extent necessary to carry out repairs and alterations, and requires that the adjoining land be returned to its original condition.

Although the City can prosecute for non-compliance with the by-law and, if successful, also request a prohibition order, in practice this can be a complex and resource-intensive undertaking by the City. If neighbours cannot agree, it is often more expeditious for them to take court action to enforce their rights. The *Trespass to Property Act* also applies if a neighbour goes beyond the limited access rights granted under the by-law. Although it is arguable that security could be required as a condition of accessing adjoining land, this requirement could only be implemented in the context of a complex and costly permit system.

Staff therefore recommend an approach based on better informing the parties to a right-of-entry matter as to their rights and obligations, and that focuses on preventing disputes and taking corresponding precautions. Under such an approach, staff would therefore undertake an intermediary and informational role, with the option open to a complainant to resort to civil court, if necessary.

The City Solicitor was consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director of Municipal Licensing and Standards recommends that:

1. Council adopt the proposed by-law amendments to Municipal Code Chapter 693, Building Construction and Demolition, in accordance with the report recommendations and Appendix A, subject to any necessary minor substantive or stylistic refinements as may be identified by the Executive Director , Municipal Licensing and Standards and the City Solicitor;
2. The Executive Director, Municipal Licensing and Standards, prepare a public information package on the use of the proposed by-law and report back to the Licensing and Standards Committee on the use of the by-law and any refinements required to it in a year's time; and
3. City staff be authorised and directed to take any other action necessary to implement the proposed by-law amendments.

IMPLEMENTATION POINTS

An operational practice will have to be developed to ensure that all complaints pertaining to right of entry are handled consistently and in accordance with this report. Development and production of materials for public information will also be required.

FINANCIAL IMPACT

The information in this report has no financial implications beyond those already approved in the current year's budget.

DECISION HISTORY

At its meeting of January 9, 2006, the Planning and Transportation Committee considered the report from the Acting Executive Director of Municipal Licensing and Standards (Report 1, Clause 13(d)) and referred it back to staff for further analysis:

<http://www.toronto.ca/legdocs/2006/agendas/committees/plt/plt060109/pltd.pdf>
<http://www.toronto.ca/legdocs/2006/agendas/committees/plt/plt060109/it012.pdf>

ISSUE BACKGROUND

With the exception of the former City of North York, all of the former municipalities have a right-of-entry by-law. At the January 9, 2006 meeting, staff brought forward a proposed City-wide by-law for consideration by the Planning and Transportation Committee. A number of issues were raised by deputants, including the right of an owner to deny access, appeal mechanisms, and dealing with damaged property.

COMMENTS

Section 101 of the *City of Toronto Act, 2006*, authorises the City to pass a by-law that grants a legal right to enter on adjoining land for specified purposes without consent, but subject to certain conditions.

The conditions under which right of entry must be exercised are that it must be done at a reasonable time, with reasonable notice, for the purposes of making repairs and alterations to buildings, fences or other structures, and only to the extent necessary to carry out the repairs or alterations. In addition, the person exercising the right to enter the adjoining land must also restore the land to its original condition and otherwise provide compensation for any damages caused by the entry or by anything else done.

Section 101 does not specifically authorize the addition of limitations on the right of entry and does not include any general authority to regulate the exercise of the right of entry. The City Solicitor (in commenting on a similar provision in the *Municipal Act*) has advised that it is arguable that additional restrictions could be imposed in the by-law, that reflect "powers implied or necessarily incidental to the powers given" under section 101 or Council's intent that the by-law is a "partial exercise" of the power given under the section. However, it is also arguable that the imposition of certain conditions is inconsistent with the legislative intent of section 101, that the by-law is to be an effective remedy for owners to carry out repairs or alterations.

If the occupant of the adjoining property does not permit entry, except in the case of non-compliance with the conditions, the City can prosecute for non-compliance with the by-law, which if successful, in addition to a fine could result in a prohibition order. The neighbour could, often more expeditiously, take civil action and seek an injunction to prohibit the adjoining property owner from denying them access.

If the neighbour fails to return the adjoining land to its original condition, the City can prosecute. In practice, however, this can prove both an extremely challenging and resource-intensive matter. Given the nature of these complaints and the evidentiary burden imposed by the Courts, a successful prosecution is very difficult. The owner of the adjoining land could more expeditiously bring a civil action to try to resolve the matter.

Currently any dispute between neighbours on a right-of-entry matter can only be adjudicated in Court in a prosecution or civil action. It has been proposed that perhaps a quasi-judicial body, such as the Property Standards Appeal Committee, can adjudicate right-of-entry disputes. There are, however, no such bodies with the statutory authority to make and impose decisions with respect to these matters. In any case, even then, any decision made by such a body would still be subject to appeal to Superior Court and with a right of action for costs.

The City Solicitor has advised that it is arguable that the City could require an owner to put up security, but only in the context of a complex and costly regulatory system, such as a permit system. The cost of the establishment, administration and enforcement of

such a system likely outweighs any potential benefits. This, however, does not preclude individuals from putting up security voluntarily or from such a security being required for use of the land that is beyond the limited right of entry. Such use, without permission and depending on the facts, could be subject to charges under the *Trespass to Property Act*. The by-law provides the basis upon which a Court can determine whether the parties to a right-of-entry dispute have conducted themselves reasonably and within the confines of the law.

Staff therefore recommend that a harmonized by-law be adopted for the City and that a consistent communication plan be implemented to help residents understand their rights and obligations under the by-law and how they can best ensure that those rights are protected by a Court, if such action is required. To this extent staff will develop and make available a number of brochures for both parties directly involved in a right-of-entry matter.

By-law Provisions

The by-law itself provides for the right to enter adjoining land under specified conditions. Notice must be provided in writing, detailing the nature of the work, its start and duration, as well as who will be carrying it out. The right of entry is limited to the extent necessary to carry out the repairs or alterations. It does not generally provide for the parking of vehicles or the storage of materials or equipment. Finally, the by-law requires that the adjoining land be brought back to its original condition and that compensation be provided for any damages.

The bylaw replaces those currently in place in the former municipalities, with the exception of North York where no such bylaw currently exists.

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SIGNATURE

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ATTACHMENTS

Appendix A: Proposed Amendments to Chapter 693, Building Construction and Demolition

Appendix A
Proposed Amendments to Chapter 693, Building Construction and Demolition

Authority: Licensing and Standards Committee Item No. _____, as adopted by City of Toronto Council on _____

Enacted by Council:

CITY OF TORONTO

Bill No.

BY-LAW No.

To amend Municipal Code Chapter 363, Building Construction and Demolition, to provide a right to enter adjoining land to make repairs and alterations and to repeal the right-of-entry by-laws of the former area municipalities.

WHEREAS all of the former area municipalities except for the former City of North York passed a right of entry by-law under paragraph 64 of section 210 of the *Municipal Act, R.S.O. 1990* or its predecessor; and

WHEREAS the power to pass a right of entry by-law has been revised in section 101 of the *City of Toronto Act, 2006*; and

WHEREAS under subsection 101(1) of the *City of Toronto Act, 2006*, the City may pass a by-law to authorize the owner or occupant of land to enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any 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; and

WHEREAS the power of entry under a by-law passed under subsection 101(1) is subject to the conditions set out in subsection 101(2), which includes new conditions that were not in paragraph 64 of section 210 of the *Municipal Act, R.S.O. 1990*; and

WHEREAS under section 367 of the *City of Toronto Act, 2006*, no person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this Act or under a by-law passed under this Act and any person who contravenes this provision is guilty of an offence; and

WHEREAS under section 366 of the *City of Toronto Act, 2006*, by-laws may be passed by the City for providing that any person who contravenes any by-law of the City passed under the authority of the *City of Toronto Act, 2006* is guilty of an offence; and

WHEREAS section 6 of By-law No. 2930-94 of the former City of York, “Being a by-law to adopt a Municipal Code.”, permits an amendment to be made to a by-law listed in the Concordance of the former City of York’s Municipal Code, in which event it shall be added to the corresponding Chapter of the Municipal Code; and

WHEREAS former City of York By-law No. 2757-77, being a by-law “To provide for the entry of an owner or occupant of lands upon adjoining lands for the purpose of making repairs, to a building.”, as amended, is listed in the Concordance as being codified as Chapter 789, Entry Upon Adjoining Land For Repair;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Chapter 363, Building Construction and Demolition, of The City of Toronto Municipal Code is amended by adding the following:

ARTICLE V
Right of Entry

§ 363-22. Right of entry.

- A. The owner or occupant of land may enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any 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.
- B. The power of entry under Subsection A is subject to compliance with the conditions in subsection 101(2) of the *City of Toronto Act, 2006*. [These conditions are noted below, in municipal code style, for reference purposes only:
 - (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 {Subsection A as enacted under section 101 of the *City of Toronto Act, 2006*} 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 {as described in Subsections C and D}.
 - (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.]
- C. Before entering upon any land under the authority of Subsection A, the owner or occupant of the building, fence or other structure or his or her employee or agent shall give written notice of the proposed entry to the occupant of the adjoining land by personal service or registered mail.
- D. The notice required under Subsection C shall include the following information:
 - (1) A description of the basic nature of the work to be carried out;
 - (2) The name of each person who will be entering the adjoining land;
 - (3) The estimated time of completion of the work; and
 - (4) A statement that the land shall be restored to its original condition, in so far as is practicable, as required by subsection 101(2) of the *City of Toronto Act, 2006*.
- E. In the case of an emergency, where a building, fence or other structure on the land poses an immediate danger to the health or safety of any person and it is not possible to give prior written notice, the owner or occupant of the building, fence or other structure or his or her employee or agent may enter upon the adjoining land in order to make remedial repairs to terminate the immediate danger to the health or safety of any person, and the notice shall be given as soon as practicable after the measures have been taken.
- F. Any person who does not permit entry by a person under the authority of Subsection A, except in the case of non-compliance with the conditions in section 101 of the *City of Toronto Act, 2006* or Subsection C, is guilty of an offence under section 367 of the *City of Toronto Act, 2006*.
- G. The owner or occupant of land who enters or causes entry on the adjoining land under the authority of this section and does not, in so far as practicable, restore the adjoining land to its original condition is guilty of an offence.
- H. For greater certainty, the owner or occupant of the land who enters or causes entry on the adjoining land under the authority of this section must ensure that any use of the adjoining land is in compliance with all applicable laws, including but not limited to Toronto Municipal Code Chapter 591, Noise.

2. The following by-laws are repealed:

- A. By-law No. 11-94, being a by-law “To permit the entry of persons on the land of another for the purpose of making repairs.” of the former Borough of East York;
- B. Municipal Code Chapter 128, Entry on Adjoining Lands, Article I, General Provisions, of the former City of Etobicoke;
- C. By-law No. 15337, “being a by-law to permit the entry of one person on the land of another for the purpose of making repairs” as amended, of the former City of Scarborough;
- D. Municipal Code Chapter 146, Building Construction and Demolition, Article III, Right of Entry, of the former City of Toronto;
- E. By-law No. 2757-77, being a by-law “To provide for the entry of an owner or occupant of lands upon adjoining lands for the purpose of making repairs, to a building.”, as amended, of the former City of York. and as codified in former City of York Municipal Code, Property Maintenance, Chapter 789, Entry Upon Adjoining Land For Repair.

3. This by-law comes into force on January 1, 2008

ENACTED AND PASSED this day of, A.D. 2007.

Mayor

City Clerk