TORONTO

STAFF REPORT
INFORMATION ONLY

Right to Enter Adjoining Land to Make Repairs

Date:	September 30, 2008
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	

SUMMARY

This report responds to the Licensing and Standards Committee's direction to report on the feasibility and financial impacts of establishing a right-of-entry permitting system. In addition, to provide better context, it also briefly summarises the following three alternatives:

- Continue the status quo (i.e., keep the existing bylaws from the former municipalities and keeping former North York without a bylaw);
- Repeal the bylaws of the former municipalities (and have no right-of-entry bylaw for the City); and
- Adopt a harmonized right-of-entry bylaw for the City that is enforced directly through civil litigation (and keep City involvement to a minimum).

A right-of-entry permitting system would operate completely apart from the current building permit system with administration and enforcement resting solely on Municipal Licensing and Standards.

Staff believe that a permitting system would be very challenging to administer and could often place the City in the role of arbiter between neighbours. It is the opinion of staff that right-of-entry matters are dealt with more effectively and efficiently through the civil court system.

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

FINANCIAL IMPACT

There are no financial implications, beyond those already approved in the current year's budget, associated with the three options, other than the permitting system, described in the Summary of this report.

The final option to adopt a harmonized permitting system and bylaw that is administered and enforced by the City would require additional staffing resources ranging from $7,500 to $106,300 per year. Based on staff's projections, which account for the type and volume of both permit and renewal applications, it is expected the average cost of the program would be $28,700 per year. This cost would be fully recoverable through the implementation of the following fees:

	Right-of-entry Permits	
	Low-impact work	High-impact work
Application		
Estimated cost	$ 229.31	$ 844.33
Proposed fee	$ 230.00	$ 845.00
Renewal		
Estimated cost	$ 126.58	$ 278.71
Proposed fee	$ 127.00	$ 279.00

The fees proposed above would automatically increase by the cost of wages on the first day of January of each year (see amendment no. 4 in Appendix A).

The above costs and fees, however, do not include any allowance associated with enforcement related to non-compliance, including potential prosecution. These costs would include both Officer time and legal costs.

If implemented, the Executive Director of Municipal Licensing and Standards would report back through the 2010 Operating Budget process on any additional costs required to administer and enforce a harmonized permitting system based on actual volumes experienced in 2009. Any additional costs would be fully offset by volume-based increased revenues.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of November 30, 2007, the Licensing and Standards Committee considered the report from the Executive Director of Municipal Licensing and Standards

(LS9.2) that recommended a City-wide by-law be adopted to provide the right to enter adjoining land for the purpose of making repairs and alterations.

The Committee deferred consideration of the report to its meeting of September 11, 2008 and requested that staff report on the feasibility and financial impacts of establishing a permitting system similar to the one currently used by the City of Ottawa.

http://www.toronto.ca/legdocs/mmis/2007/ls/decisions/2007-11-30-ls09-dd.pdf

This information report is therefore an addendum to the October 19, 2007 action report. If the Licensing and Standards Committee wishes to adopt the permitting model presented in this report, it may do so by amending the recommendations of the October 2007 report to adopt the bylaw included as Appendix A of this report.

ISSUE BACKGROUND

With the exception of the former City of North York, all of the former municipalities have a right-of-entry by-law passed under the *Municipal Act, 2001*, and continued under the *City of Toronto Act, 2006*.

Although the City can prosecute for non-compliance with the by-laws and, if successful, also request a prohibition order, in practice this can often be a complex, resource-intensive, and time-consuming undertaking by the City. If neighbours cannot agree on the applicability of the bylaw, it is often more expeditious for them to take court action to enforce their rights under the bylaw and Act. For this reason, aside from providing information to residents and sometimes acting as mediators, the City has generally not gotten heavily involved in these matters.

This approach by the City, however, has some perceived disadvantages as well, many of which were described by members of the public making deputations before both the Licensing and Standards Committee and its predecessor, the Planning and Transportation Committee. For this reason staff have been requested to look at a permitting system which would effectively place the onus on the City to regulate and ensure compliance with the terms of the bylaw.

COMMENTS

In reviewing the issue of right of entry to adjoining land, staff identified four options, including the option to establish a right-of-entry permitting system, along with their respective advantages and disadvantages. These options are summarised in Table 1.

Under the *City of Toronto, 2006* Act the City may in its application of its bylaws differentiate in any way and on any basis it considers appropriate. Thus, it may be argued that the City has the option to continue with its current five bylaws and to continue to exclude the former North York from adopting right-of-entry provisions. In the mind of staff, however, there is no real policy rationale for such differentiation. In addition, the current situation will perpetuate the differences in how right-of-entry matters are handled across the City, with a person being subject to one set of regulations and his or her

neighbour potentially being subject to others or to none at all. The differences would also continue to be confusing for staff, especially for those who often deal with Wards that cut across the boundaries of former municipalities.

Table1: Right-of-entry options.

Option	**Advantages**	**Disadvantages**
Status quo (keep bylaws from former municipalities; former North York remains without a bylaw)		• There is no policy rationale to maintain differentiation across former municipalities • Is operationally confusing for staff • Creates inequities across the City in terms of how bylaws are applied
Repeal bylaws of former municipalities (and have no right-of-entry bylaw for the City)	• No direct responsibility for the City	• Takes away existing rights to enter adjoining land • The only recourse for residents who require right-of-entry is through the Courts (if they can avail themselves of other easement provisions) • In some cases could make compliance with Orders more difficult
Adopt a harmonised right-of-entry bylaw for the City that, in the case of disagreement between neighbours, is enforced directly through civil litigation	• Is operationally simple for staff • Is legally simple • Is not resource intensive	• It is up to residents to use the courts for enforcement • In cases where court action is required, it could increase the time frames for compliance with Orders
Adopt a harmonized permitting system and bylaw that is enforced by the City	• Residents have a clear, but more formal, mechanism to obtain right of entry • Owners of the adjoining land protect their rights in a more formal way	• Is operationally highly complex • Is legally highly complex • Is highly resource intensive and will likely require increased staffing

Although repealing all of the existing right-of-entry bylaws would effectively eliminate any responsibility by the City for these matters, it would also create a situation by which only those both having another legal right of entry separate from that found in the former bylaw and willing and able to use the courts to enforce their right might be able to carry out repairs or alterations. Eligible work could also be considerably limited, depending on the scope of the separate right.

Adopting a harmonised right-of-entry bylaw for the City would provide consistency across the City and recourse to residents requiring right of entry, making it operationally and legally simpler to implement for the City. Under this approach, however, if a dispute arose between neighbours as to the applicability of the bylaw or the Act, it could be more complex and onerous for them to avail themselves of the right of entry, as they would have to take civil action to enforce their rights under the bylaw.

As per the direction of the Licensing and Standards Committee, staff reviewed the feasibility of a permitting system that could be used to both regulate the right of entry to adjoining land and ensure compliance with the bylaw. Such a scheme would provide a clear, formal mechanism for owners to access adjoining land to make repairs and alterations. It would also serve to more explicitly protect the rights of those whose land was being accessed, as the permit sets out the conditions in the Act and bylaw. At the same time, however, the administration and enforcement of such a system would be complex and involved and would require additional staffing resources.

The remainder of this report examines right-of-entry legislation in other jurisdictions and provides an analysis of how the Ontario legislation might be used in Toronto to implement a permitting system.

Other Jurisdictions

Right-of-entry legislation exists both in other provinces and countries. The extent of the right and the manner in which the right is applied, however, tend to vary. In the United Kingdom, right-of-entry legislation is intended to allow access for the purpose of preservation work where such work cannot be carried out or would be substantially more difficult to carry out with the access to the adjoining land. The UK Act does not encompass work for its own sake. In Tasmania, the model is very similar except that new building work is also included in the scope of the legislation. Both the UK and Tasmanian legislation reflect a discretionary scheme. In other words, the right of entry is not automatic and it is not prescriptive. Persons must apply to a tribunal to obtain the right of entry. In Tasmania this was done because it was felt that a discretionary system would be broad enough to cover all possibilities while avoiding the difficulties in having to legislatively define the work that an automatic right would cover. In the UK the discretionary model was adopted because of its flexibility and safeguards, and also because the Law Reform Commission believed that there would be misgivings about the creation of a general right of entry.

In Canada, a number of provinces also have right-of-entry legislation. In British Columbia, Section 34 of the Property Law Act states that “[t]he owner of a dwelling

house on one parcel of land may apply to the Supreme Court for an order permitting the owner to enter adjoining land to carry out repair or work…" This right may be requested for any type of work as long as it cannot be effected without access and if such access is refused by the owner of the adjoining land. An order states the period of time for the permission, that the owner must compensate the adjoining owner for any damages in an amount to be determined by the court, and any other terms that the court may consider reasonable. The legislation in Manitoba is very similar and also requires the making of an application to the court.

In both international and Canadian cases, the right of entry is applied locally but governed by statute. It is therefore the approach in the corresponding legislation, with its prescribed requirements and limitations, that ultimately determines the nature of local right-of-entry bylaws. What is particularly instructive in both the international and Canadian cases, other than Ontario, is that an application to enter adjoining land is heard and granted by the courts. In other words, it is a civil matter.

In Canada, the right of entry to adjoining land falls under provincial jurisdiction. In Ontario the authority for municipalities to pass right-of-entry bylaws is found in the *Municipal Act, 2001*, and in the case of the City of Toronto in the *City of Toronto Act, 2006*.

Right of Entry in Ontario

Section 101 of the *City of Toronto Act, 2006*, authorises the City to pass a bylaw that grants a legal right to enter on adjoining land for specified purposes without consent, but subject to certain conditions. There is no need for application to the courts to obtain the right to enter, but a by-law needs to be in effect. The same provisions exist in the *Municipal Act, 2001* for other municipalities in Ontario. This approach, unlike those in British Columbia and Manitoba, places the onus on individual municipalities to decide whether such a right is needed. And, like with any other bylaw, it also provides municipalities with the authority to develop its own administrative and enforcement mechanisms for its implementation.

Under the provisions of both the *Municipal Act, 2006* and the *City of Toronto Act, 2006*, the right of entry must be exercised 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.

Five major Ontario municipalities were reviewed with respect to right of entry. Four of the five municipalities have right-of-entry bylaws, but only Ottawa and Windsor have permitting systems in place (see Table 2).

Table 2: Right of entry in other municipalities.

Municipality	Right-of-entry bylaw?	Permitting system?
Ottawa	Yes: (Bylaw No. 2005-0025)	Yes
Windsor	Yes: (Bylaw No. 5711)	Yes
Mississauga	No	N/A
London	Yes: (Bylaw No.A-6)	No
Oshawa	Yes: (Bylaw No. 46-96)	No

Although the system has been in place for several decades in the City of Windsor, only six right-of-entry permits have been issued by the City. Permits are only issued when access to the adjoining land is refused by the owner or occupant. Officials in Windsor report no issues arising with respect to any of the permits they have issued. In Ottawa the permitting system has been in place since the third quarter of 2005 and approximately one dozen permits have been issued. Like in Windsor, permits are only necessary when neighbours do not wish to co-operate. In the case of Ottawa, there was a recent attempt to obtain an injunction to prevent a right-of-entry permit from being exercised. The Court, however, found against the plaintiff and upheld the permit.

Section 101 does not specifically authorise 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 the opinion of staff, however, this may 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 based on their rights under the Act and the civil burden of proof. As the initiation

of such action is entirely within the private realm, its frequency compared to total right-of-entry matters is not known.

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.

Feasibility of a permitting system

In addition to the City's specific power to pass a right-of-entry bylaw under section 101 of the *City of Toronto Act, 2006*, the scope of power provisions in sections 6 and 10 of the Act, and more specifically the general power under subsection 8(1), to provide services, and under subsection 8(2), paragraph 8, to pass bylaws for the protection of persons and property, would allow the City to implement a right-of-entry permitting system.

The City Solicitor has advised that it is arguable that the City could require an owner to put up security and impose other conditions, but only in the context of a complex and costly regulatory system, such as a permitting system. Such a system still does not preclude individuals from putting up security voluntarily, or from such a security being required by the owner of the adjoining land, for use of the land that is beyond the limited right of entry, as such use, without permission and depending on the facts, could otherwise be subject to charges under the *Trespass to Property Act*. Thus, even under a well-defined permitting system, the spectre of manoeuvering outside the jurisdiction of the right-of-entry bylaw by neighbours or of the undertaking of civil action is not eliminated.

The legislatively prescribed involvement of the City through a permitting system, however, does hold the potential for Officers to be placed in a role of arbiter between feuding neighbours. And, in the end, the City cannot compel the owner of adjoining land to grant access. Only a judge may impose such a requirement if a bylaw is in place.

For these reasons, staff are still of the opinion, as set out in the October 19, 2007 report from the Executive Director, that an approach based on better informing the parties to a right-of-entry matter as to their rights and obligations under a general bylaw, and that focuses on preventing disputes and taking corresponding precautions, is the overall better option in dealing with these matters. Under such an approach, staff would continue to undertake an intermediary and informational role, with the option open to a complainant to resort to civil action, if necessary. In this context, a right-of-entry by-law can provide 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.

If, on the other hand, Council decided to move forward with a permitting system there could be a material draw on resources depending on the actual number of permits issued and particularly if a significant number of these permits result in charges and prosecutions. Specific costs are addressed in the final section of this report.

Potential by-law provisions for a permitting system

The former City of Toronto includes its right-of-entry provisions in its Municipal Code Chapter 146, Building Construction and Demolition. New City-wide provisions could therefore be included in the successor legislation, Toronto Municipal Code Chapter 363, Building Construction and Demolition. Further amendments would have to be made to Toronto Municipal Code Chapter 441, Fees and Charges, to allow for permit application and renewal fees. These necessary amendments are provided in Appendix A of this report.

A right-of-entry permitting system would operate completely separately from the system of building permits administered by Toronto Building. Compliance with the bylaw and the administration of permits issued under it would be the responsibility of Municipal Licensing and Standards.

The bylaw would include the general right and conditions, as per section 101 of the City of Toronto Act. It would further provide for a system of permits and an issuance process for those permits, including the requirements for obtaining such a permit. The bylaw would set out notice requirements as well provisions for providing security. The bylaw would also set out appropriate conditions to deal with emergency situations. And finally, it would provide for a schedule of permitting fees as well as an enforcement mechanism for dealing with non-compliance.

The bylaw would replace those currently in place in the former municipalities, with the exception of North York where no such bylaw currently exists, and apply equally across the amalgamated City of Toronto.

Staff anticipate needing four months to establish the administrative systems and procedures, as well as train administrative, front-counter and enforcement staff. For this reason, if the attached bylaw were to be adopted it would not come into force until 120 days later.

Anticipated costs of a permitting system

Over a period of six months, from March 1 to August 31, 2008, Municipal Licensing and Standards staff tracked the number of inquiries from the public respecting right-of-entry matters to estimate the potential number of right-of-entry permits that might be issued. In the period in question, Municipal Licensing and Standards tracked 58 right-of-entry inquires. Toronto Building did not track inquiries but staff estimate that Toronto Building received about one half the number of inquiries that Municipal Licensing and Standards did. Figures were seasonally adjusted to reflect the fact that few repairs and alterations take place during the winter months and therefore few right-of-entry permits would ever

be issued during this period. Therefore the total annual estimate for right-of-entry inquiries to the City is 93.

Staff also developed a draft process for reviewing and issuing permits and costed each task to determine its direct cost and to arrive at a potential cost-recovery fee. This was done for both low and high impact work permits as well as for their renewal applications, with the results displayed in Table 3. The costs considered, however, did not include Officer court time costs or any legal costs associated with the prosecution of any charges laid. Although litigation is expected only rarely, even a single case in court could tie up significant resources.

Table 3: Right-of-entry permit fees.

Permit Type	Amount
High-impact work, right-of-entry permit application	$ 845.00
High-impact work, right-of-entry permit renewal	$ 279.00
Low-impact work, right-of-entry permit application	$ 230.00
Low-impact work, right-of-entry permit renewal	$ 127.00

Based on the fees calculated, staff conducted a sensitivity analysis and estimated that there is:

(1) a 50% probability that permit fees will dissuade most people from applying for a permit, except under the most severe of circumstances, or in about 10% of cases;

(2) a 40% probability that permit fees will dissuade half, or 50%, of the people from availing themselves of the right-of-entry permit; and

(3) a small, or 10%, probability that the establishment of a permitting system may actually encourage more people, perhaps 150% of the volume actually recorded, to avail themselves of the provisions of the bylaw.

These estimates were used to populate a probability tree and calculate an expected cost.

Staff further assumed that two thirds of all permits applications would be for high-impact work and that the remaining one third would be for low-impact work. Staff also assumed that in 20% of all cases permits would have to be renewed.

On this basis, the expected cost of a right-of-entry programme is about $28,700, with a potential cost range of between $7,500 and $106,300.

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SIGNATURE

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ATTACHMENTS

Appendix A: Sample Right-of-Entry Permitting By-law

Appendix A
Sample Right-of-Entry Permitting By-law

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. Definitions and word usage.

A. As used in this article, the following terms shall have the meanings indicated:

ALTERATION — Any structural changes to the exterior or interior of any existing building, fence or other structure that are designed to improve, modernise or increase its usefulness, but which does not include a total replacement.

APPLICANT — The owner or occupant of a building or property who applies for a right-of-entry permit, or any person authorised by the owner or occupant to apply for a right-of-entry permit on the owner's or occupant's behalf.

BUILDING — The same meaning as in section 1 of the *Building Code Act, 1992*. [This meaning is noted as follows for reference purposes only:

A. A structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto;

B. A structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto;

C. Plumbing not located in a structure;

D. A sewage system; or

E. Structures designated in the building code.]

DIRECTOR — The Executive Director, Municipal Licensing and Standards or his or her designate for the purposes of this article.

EMERGENCY — A deficiency of a building, fence, or other structure that poses an immediate danger to the health and safety of any person or property.

HIGH-IMPACT WORK – A repair or alteration that requires entry on the adjoining land for the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; or the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving.

LOW-IMPACT WORK – A repair or alteration that requires entry on the adjoining land to carry out work that does not include the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; and the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving.

OFFICER — A City employee whose duties include the enforcement of this chapter.

RIGHT-OF-ENTRY PERMIT — A permit authorising right of entry on adjoining lands for the purposes set out in §363-23A.

PERMIT HOLDER — The owner or occupant to whom a right-of-entry permit has been issued.

REPAIR — Includes:

(1) Maintenance and upkeep; and

(2) The provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a building, fence or other structure conforms with the standards established in a bylaw or Act.

B. As used in this article, the terms OCCUPANT, OWNER, and PROPERTY shall have the same meaning as in Subsection 15.1(1) of the Building Code Act, 1992. [These meanings are noted as follows for reference purposes only:

(1) OCCUPANT — Any person or persons over the age of 18 years in possession of the property.

(2) OWNER — Includes,

(a) The person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and

(b) A lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property.

(3) PROPERTY — A building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property.]

§ 363-23. Right of entry on consent or by permit.

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:

(1) If the owner of the adjoining land has given prior consent to this entry; or

(2) If a right-of-entry permit has been issued for this entry and the entry occurs during the period specified in the permit.

B. The power of entry under Subsection A(2) is subject to compliance with the following conditions:

(1) The power of entry may only be exercised by a permit holder or his or her employees or agents and who comply with all of the conditions of the right-of-entry permit and the provisions of this article.

(2) A person exercising the power of entry must display or, on request, produce proper identification.

(3) The permit holder shall provide reasonable notice of the proposed entry to the occupant of the adjoining land, as described in § 363-24B(9)(e).

(4) The permit holder, his or her employees or agents, shall not create any hazards or allow any hazards to exist.

(5) The permit holder 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.

(6) Without limiting the generality of Subsection B(5), restoring the adjoining land to its original condition includes removing any equipment or materials left on the adjoining land as a result of the entry.

C. The power of entry under Subsection A(2) does not authorise:

(1) Entry into a building on the adjoining land;

(2) The use of the adjoining land for any other work or activity other than that described on the right-of-entry permit;

(3) The storage of materials or equipment, or the parking of vehicles, on the adjoining land; and

(4) Any exemption to anyone from complying with other City bylaws.

D. In the case of entry under the consent of the owner of the adjoining land under Subsection A(1), the conditions and limitations in Subsections B and C apply to the power of entry, with necessary modifications, unless the owner granting the consent and the owner or occupant exercising the right of entry agree otherwise.

§ 363-24. Permit application.

A. To obtain a permit, the owner shall file a complete application with the Executive Director on a form prescribed by him or her.

B. An application for a right-of-entry permit must include the following:

(1) The name, address, and telephone number of all contractors that will carry out the proposed work;

(2) The municipal business licence number of every contractor or trade, if required to be licensed by the City;

(3) The insurance type and number of every contractor or trade, if required to be insured in accordance with municipal or provincial regulations;

(4) The nature of the proposed work and the proposed use of the adjoining land, including what equipment will be used, if and how the land will be distressed, and whether any nuisances will result from the proposed work (for example, dust, fumes, noise, or restricted access);

(5) The proposed attenuating measures to control each of the nuisances identified;

(6) The proposed remediation measures required to bring the adjoining land, in so far as is practicable, to its original condition;

(7) An estimate of the time that the proposed work and use of the adjoining land, as described in Subsection B(4) is expected to take;

(8) The days and times that entry will be required;

(9) A signed form acknowledging the owner's obligation to:

(a) Use the adjoining land only to the extent necessary to carry out the work outlined in the permit;

(b) Not use the land for any other purpose, including for the storage of materials or equipment and the parking of vehicles;

(c) Restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land to the satisfaction of the Executive Director;

(d) Provide a security deposit and agree to its forfeiture if deemed necessary by the Executive Director to comply with the owner's obligations to restore the adjoining land and provide compensation for damages;

(e) Provide at least 24 hours notice in writing to the occupant of the adjoining land before any contractor enters the adjoining land;

(f) Systematically mitigate all nuisances to the extent practicable; and

(g) Hold both the City and the owner of the adjoining land harmless in the event of any damages to people or property, to the extent allowable by law.

(10) Proof that the owner of the adjoining land and the adjoining land have been included as a named insured in the liability insurance of the owner for the period covering the estimated time of the proposed work.

(11) The right-of-entry permit fee set out in Appendix C, Schedule 15 of the Municipal Code Chapter 441, Fees and Charges.

C. The notice required under Subsection B(10)(e) may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

D. The application fee is non-refundable and shall be in a form satisfactory to the Executive Director.

§ 363-25. Notice to adjoining-land owner.

A. After receiving a completed application, the Executive Director shall notify the owner of the adjoining land in writing that a right-of-entry permit has been requested to access the land, and such notice shall provide all of the relevant information, set out in § 363-24B.

B. The owner of the adjoining land may, within 10 business days of the date specified in the notice, make a submission to the Executive Director and provide detail of any circumstances that may be considered by the Executive Director in establishing the conditions of the permit.

C. The Executive Director may extend the submission time under Subsection B for not more than 10 business days.

D. The Executive Director shall provide the owner of the adjoining land with a copy of any right-of-entry permit or renewal thereof that applies to the land.

§ 363-26. Permit issuance; renewal; revocation.

A. The security deposit, as set out in § 363-27, shall be submitted before a right-of-entry permit is issued.

B. A right-of-entry permit issued under this article shall indicate the period and times during which the right of entry may be exercised, and this period shall not commence earlier than five business days from the date of issuance.

C. The permit holder or owner may apply to the Executive Director for a renewal of the right-of-entry permit before the expiry date of the right of entry under the current permit.

D. A right-of-entry permit-renewal application shall include all the information and other documents required under § 363-24B.

E. After a complete right-of-entry permit-renewal application is received, the Executive Director shall notify the owner of the adjoining land in writing that a permit-renewal application has been requested by the applicant.

F. The owner of the adjoining land may, within 10 business days from the date specified in the notice, make a submission to the Executive Director providing details of any circumstances that may be considered by him or her in reviewing the permit-application renewal.

G. If a renewal is granted, it shall deem the existing permit to continue for the period specified in the approval and may provide that the right of entry is subject to any

existing conditions or additional conditions as established by the Executive Director.

H. The Executive Director may revoke a right-of-entry permit or deny the renewal of a right-of-entry permit if there is non-compliance with the permit conditions.

I. If a right-of-entry permit is revoked or is not renewed, the permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land, to the satisfaction of the executive Director.

§ 363-27. Security deposit.

A. The security deposit for a right-of-entry permit for low-impact work is $500.00.

B. The minimum security deposit for a right-of-entry permit for high-impact work is $2,000.00.

C. The Executive Director shall determine the amount of the security deposit required for a right-of-entry permit for high-impact work beyond the minimum amount set out in Subsection B and shall base this amount on the information in the permit application, the inspection by officers, any submissions by the owner of the adjoining land, and any other information deemed reasonable by the Executive Director for this purpose.

D. If in his or her submission, under § 363-25B, the owner of the adjoining land requests a review of the security deposit established by the Executive Director, the submission shall include a detailed estimate in a form acceptable to the Executive Director.

E. The security deposit amount established by the Executive Director after any review of a submission under § 363-25B shall be deemed final.

F. The security deposit for a right-of-entry permit shall be in the form of a certified cheque made out to the City Treasurer.

G. The City may hold the security deposit for no more than 60 days after the completion of the work, the expiry of the right of entry under the permit, or the completion of any action by the City, whichever is later, to ensure compliance with the permit holder’s obligations under § 363-23B(5).

H. If within the period in Subsection G the Executive Director determines that the permit holder has not complied with the requirements to restore the land and pay compensation for damages as required under § 363-23B(5), the City may provide the owner of the adjoining land with all or part of the security deposit and return any remainder to the permit holder.

§ 363-28. Emergency exception.

A. If a building, fence or other structure on the land poses an immediate danger to the health or safety of any person, the owner or occupant of the building , fence or other structure or his or her employee or agent may enter the adjoining land without a permit or prior consent, but only to the extent necessary to terminate the emergency.

B. The owner shall, to the extent possible, notify the occupant of the adjoining land of the emergency and the need to enter the adjoining land before accessing it.

C. All work necessary to terminate the emergency shall be carried out as if a permit had been granted under this article and is subject to compliance with the conditions in §363-23B, other than notice, and to any other permit conditions retroactively imposed by the Executive Director.

D. Unless the owner of the adjoining land waives this requirement, the owner undertaking the work shall apply for a permit retroactively for the work performed to terminate the emergency as well as for any other work additionally required.

§ 363-29. Inspection.

A. An officer, other employee, or agent of the City may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

(1) This article;

(2) A condition of a permit issued under this article;

(3) A direction or order of the City made under this article or the *City of Toronto Act, 2006*;

(4) An order made by a court under section 372 of the *City of Toronto Act, 2006*.

B. A person carrying out an inspection under Subsection A may:

(1) Require the production for inspection of documents or things relevant to the inspection;

(2) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

(3) Require information from any person concerning a matter related to the inspection;

(4) Alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

§ 363-30. Orders to comply.

A. An officer who finds a contravention of this article may make one or more orders requiring discontinuance of the contravening activity or to do work to correct the contravention under Section 384 or 385 of the *City of Toronto Act, 2006*.

B. The order may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

C. If there is evidence that the occupant of the land is not the registered property owner, the notice shall be served on both the registered property owner and the occupant of the land.

D. If the address of the owner is unknown or the City is unable to effect service on the owner or occupant under Section C, a placard stating the terms of the order and placed in a conspicuous place upon land on or near the property shall be deemed to be sufficient notice to the owner.

E. If the delay necessary to give an order under the preceding subsections would result in an immediate danger to the health and safety of any person, the order may be served personally on the person to whom it is directed or by a placard stating the terms of the order and placed in a conspicuous place upon land on or near the property.

§ 363-31. Remedial action.

If a person fails to comply with an order to do work to correct a contravention of this article, the Executive Director, or persons acting upon his or her instructions, may enter the lands at any reasonable time for the purposes of doing the things described in the order at the person’s expense.

§ 363-32. Offences.

A. Every person who contravenes a provision of this article is guilty of an offence.

B. Every person who fails to comply with a term or condition of a permit under this article is guilty of an offence.

C. Every person who contravenes an order under Subsection 384(1) or 385(1) of the *City of Toronto Act, 2006* is guilty of an offence.

D. Any person who does not permit entry by a person under the authority of a permit issued under this article, except in the case of non-compliance with the conditions in § 363-23B and C or the permit, is guilty of an offence under Section 367 of the *City of Toronto Act, 2006*.

2. Repeal and transition:

A. The following by-laws are repealed:

(1) 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;

(2) Municipal Code Chapter 128, Entry on Adjoining Lands, Article I, General Provisions, of the former City of Etobicoke;

(3) 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;

(4) Municipal Code Chapter 146, Building Construction and Demolition, Article III, Right of Entry, of the former City of Toronto;

(5) 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.

B. Despite Subsection A, any investigation or legal proceeding commenced under or in respect of the said bylaws prior to the enactment of this chapter shall be continued under and in conformity with their respective provisions.

3. Chapter 441, Fees and Charges, of The City of Toronto Municipal Code is amended by adding the following:

Chapter 441, Fees and Charges
Appendix C, Schedule 15, Municipal Licensing and Standards

*	To Column I	To Column II	To Column III	To Column IV	To Column V
**	Application fee – right of entry	Permit for low-impact work	Per application	$ 230.00	Yes, as in §442-14
**	Application fee – right of entry	Permit for high-impact work	Per application	$ 845.00	Yes, as in §442-14
**	Application fee – right of entry	Renewal of right-of-entry permit for low-impact work	Per application	$ 127.00	Yes, as in §442-14
**	Application fee – right of entry	Renewal of right-of-entry permit for high-impact work	Per application	$ 279.00	Yes, as in §442-14

* To unnumbered column for row numbers.
** Row numbers to be added at time of bill.

4. Chapter 442, Fees and Charges, Administration of, of The City of Toronto Municipal Code is amended by adding the following:

§ 442-14. Right-of-entry permit annual increase.

The annual adjustment for an application fee for a right-of-entry permit or renewal thereof under Article V, Right of Entry, of Chapter 363, Building Construction and Demolition, set out in Appendix C, Schedule 15 of Chapter 441 shall be calculated as follows:

A. The fee shall be adjusted annually, on the first day of January, by the percentage increase in wages for that year, as prescribed in the collective agreement with the City's full-time inside workers.

B. When a collective agreement is not in place, the adjustment, as of January 1, shall be based on the increase for the last year for which there was a contract in place.

C. When a collective agreement is ratified, the adjustment for the following year, as of January 1, shall be based on the percentage increase in wages for that year, as prescribed in the collective agreement with the City's full-time inside workers, plus the difference between any collective agreement increases to be applied retroactively and those adjustments actually applied over the same period, as follows:

$$F_C = F_P \times \left(1 + a_{n-y} + \left(\sum_{i=n-y}^{n-1} a_i - \sum_{i=n-y}^{n-1} g_i\right)\right)$$

Where, F_C is the fee for the current year;
F_P is the fee for the previous year;
a is the percent increase in wages as per the agreement, whether current or applied retroactively;
y is the number of years sine an agreement was in place and is calculated as the current year less the last year an agreement was in place;
n is the current year, and therefore *n-1* is the previous year and *n-y* is the last year that a collective agreement was in place; and
g is the increase actually applied.

5. This by-law shall come into effect 120 days from its adoption.