



REPORT FOR ACTION

Reviewing the City's Process to Authorize Access to a Neighbour's Property

Date: May 31, 2017

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report responds to a request from the Licensing and Standards Committee for staff to review Article V, Right-of-Entry (RoE), within Toronto Municipal Code Chapter 363, Building Construction and Demolition. This report proposes repealing the Right-of-Entry (RoE) provisions in Chapter 363. This approach limits the need for the City to enforce private right-of-entry matters, which is a complex, resource intensive and time-consuming undertaking.

The current bylaw establishes a process that allows the City to grant a property owner the right to enter lands on a neighbouring property, even if the adjoining property owner objects. The bylaw was enacted with the intention that it would enable property owners to make repairs and alterations to existing buildings, fences or other structures that could only be made by accessing lands on the neighbouring property. The access authorized under this provision is limited to adjoining lands and does not allow entry into neighbouring buildings. The current process includes a complex permit system and results in the use of significant City resources to facilitate and enforce matters between the private parties involved.

In the last five years, Municipal Licensing and Standards (ML&S) has issued 60 RoE permits, with 3 permits/year being issued in 2015 and 2016. The historically low use of the RoE permit suggests that the majority of property owners requiring access are successfully negotiating authorization through alternative mechanisms. It is therefore expected that the majority of residents would be unaffected if the provisions were repealed.

Legal Services was consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards, recommends that:

1. City Council amend Chapter 363, Building Construction and Demolition, by repealing Article V, Right of Entry.
2. City Council direct that any permit issued under Chapter 363, Article V, prior to the repeal be governed in accordance with the provisions of Article V, Right of Entry, as it read immediately prior to repeal.
3. City Council amend Chapter 441 by deleting the Application fee and the Renewal fee for a Low-Impact and High-Impact Right of Entry permit.

FINANCIAL IMPACT

There is minimal financial impact resulting from the adoption of the recommendations in this report. Based on the number of permits issued in 2016, future annual revenue of approximately \$2,500 may be foregone with the repeal of the Article. This revenue would be absorbed or offset within the operating budget of the Municipal Licensing and Standards division.

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

DECISION HISTORY

At its [meeting of April 14, 2016](#), the Licensing and Standards Committee requested staff to review the Right-of-Entry Bylaw and to report back on its effectiveness; the cost of administration; and on any concerns or improvements that should be made.

At its [meeting of October 30, 2008](#), City Council adopted the recommendations of a report from the Executive Director, Municipal Licensing and Standards, with some amendments, to enact the current Right-of-Entry Bylaw.

At its [meeting of October 15, 2008](#), the Licensing and Standards Committee adopted a report from the Executive Director, Municipal Licensing and Standards, with some amendments, including implementation of a permit system for the proposed Right-of-Entry Bylaw.

At its [meeting of November 30, 2007](#), the Licensing and Standards Committee considered a report from the Executive Director, Municipal Licensing and Standards, regarding a proposed Right-of-Entry Bylaw. The Committee requested the Executive Director to report back on the feasibility of a permitting system.

At its [meeting of January 9, 2006](#), the Planning and Transportation Committee considered a report from the Acting Executive Director, Municipal Licensing and Standards, regarding a proposed Right-of-Entry Bylaw. The Committee deferred consideration of the report and requested the Acting Executive Director to determine whether additional or alternative recommendations should be included in the proposed Bylaw, such as the right of an owner to deny access, appeal mechanisms and damage to property.

At its [meeting of June 27, 2005](#), the Planning and Transportation Committee considered a report from the Executive Director, Municipal Licensing and Standards, regarding a proposed Right-of-Entry Bylaw. This report was deferred by the Committee for referral to the North York and Etobicoke York Community Councils.

COMMENTS

In urban areas where houses are built close together and close to the property line, some homeowners may need to pass through or temporarily occupy a portion of a neighbouring property in order to make repairs or alterations to their own property. When these situations arise, it is necessary for the property owner to gain permission from their neighbour to enter the adjoining property. Without this permission, the property owner could be subject to allegations of trespass. The following mechanisms are available for a property owner to gain authority to enter a neighbouring property:

Consent through Mutual Agreement

The property owner can approach their neighbour and negotiate an agreement, either in writing or verbally, to gain entry. If the neighbour gives their consent, the property owner may enter and undertake the necessary work without any requirement for municipal involvement.

Easement Agreement

Some properties have a registered easement on title which provides the adjacent property owner with the right to access the neighbouring property for a specific limited purpose.

Court Order

If the parties are unable to reach an agreement to gain entry, and there is no registered easement on title, the property owner may attempt to seek a court order requiring the neighbour to provide access to allow for maintenance or repairs to the property. Any costs associated with this action would be borne entirely by the private property owners.

Right-of-Entry Bylaw

In addition to the above options, the property owner can seek authority to enter from the City. A permit issued by the City under this Bylaw only authorizes access to adjoining lands to undertake repairs or alterations to their building(s), fences and/or structure(s). The Bylaw cannot be used to gain entry to a neighbouring property in the case of new construction, and can't be used to gain access to the interior of a neighbouring building.

Authority to enact the Right-of-Entry Bylaw derives from the City of Toronto Act, 2006 (COTA), which authorizes the City to pass a bylaw that grants a property owner legal right to enter adjoining land for specified purposes without consent of their neighbouring property owner, subject to certain conditions. Other municipalities in Ontario are granted this same authority under the Municipal Act, 2001.

All of the former area municipalities with the exception of North York had a Right-of-Entry Bylaw at the time of amalgamation. The current Right-of-Entry Bylaw was adopted by City Council on October 30, 2008 and came into effect on February 28, 2009.

Assessment of Toronto's Right-of-Entry Bylaw

A significant and ongoing challenge with the RoE Bylaw is that it actively involves the City in matters of dispute that are otherwise entirely private. Pursuing access via the RoE permit process is an indication that a neighbour has not given consent to the property owner to enter. The current permit process, therefore, almost always involves a very acrimonious relationship between two property owners. Administering a permit process in this environment is very resource intensive: staff effort and attention is required throughout the life of the permit, and sometimes more than one-year after completion of the work. An outline of this work follows:

- Frontline clerks screen, intake and circulate applications to the appropriate District office
- Municipal Standards Officers (MSO's) review the application and may conduct a site inspection to confirm that a permit is required
- If the application passes staff's initial assessment, a letter is sent to the adjoining property owner advising them that entry is being sought, and asking them to identify any conditions or concerns they have with respect to the proposed RoE permit
- Upon receipt of responses from the affected property owner, terms and conditions are developed for the RoE permit by the area Supervisor in consultation with their District Manager and Director or Legal Services where necessary
- District Managers approve issuance of the RoE permit including applicable conditions and time constraints
- Once all fees are paid, security deposits are provided, and proof of insurance is provided, the RoE permit may be issued
- MSO's then perform detailed documentation of the "before" condition, monitor the work as it is on-going, and document the "after" condition of the property including inspecting to determine if any damage has occurred
- Once the final inspection is complete, the deposit is released (for High Impact work, the deposit is not released until 1 year following completion of the work).

In the case of high impact work, an additional challenge with the current permit process stems from the requirement for ML&S staff to determine a suitable deposit amount. This requires staff to assess the value of property that is exposed to risk of damage as a result of the proposed maintenance or work. This is challenging, and often highly subjective, because it requires staff to quantify potential / unforeseen damages that might arise through the proposed work. Should damage then occur, an additional challenge can arise through the requirement to establish a direct causal relationship between the work carried out on the adjoining land and the damage that has occurred

(i.e. was the damage a direct result of work authorized under the permit, or was the damage a result of other factors, such as a neighbour neglecting to maintain their property).

Volume of Permits

Sixty right-of-entry permits have been issued over the 5-year period from 2012 to 2016 (refer to table 1, below). In light of the challenges in administering the bylaw, ML&S implemented a policy in 2014 to screen out applications that do not have health and/or safety implications for occupancy and use. This decision helped focus municipal resources on mitigating serious issues where there is a demonstrable health and safety concern, or to prevent such a concern from arising (for example, facilitating repairs to a pool fence). Overall, the number of permits issued is very low. This suggests that the majority of property owners that need access to their neighbour's property are able to negotiate authorization through alternative mechanisms outside the permit process.

All of the permits issued since 2014 have been for detached and semi-detached houses. In the majority of cases, these permits have facilitated work related to the maintenance of exterior walls (waterproofing, siding, stucco, eavestroughs, etc.).

Year	No. of Applications	No. of Permits Issued
2012	38	20
2013	30	20
2014	23	14
2015	6	3
2016	8	3

Table 1: Right-of-Entry Applications and Permits Issued, 2012-2016

Cost of Administration

An additional challenge that was unanticipated when the Article was enacted is related to the extent of involvement (and associated cost) that is required from Legal Services and senior management within the ML&S Division. Due to the complicated and adversarial nature of the process, most RoE permits require the direct involvement Legal Services staff and the Director, Investigation Services. In some circumstances, direct involvement of the Executive Director of ML&S has also been required. The involvement of Legal Services can be required to provide assistance in interpretations of the Bylaw; and in determining the applicability of the Bylaw as part of the permitting process. Advice of this nature is required when it is not readily apparent if the scope of proposed work fits within the intent of the Bylaw; or when determining if permit conditions have been breached. In the 2015-16 period, Legal Services spent approximately 88 hours providing advice on this issue to ML&S. Additional legal expenses arise when claims are brought against the City through the course of

administering the RoE Bylaw. In the 2015-16 period, the Legal Services Division spent approximately 114 hours on two litigation cases related to the RoE permit process.

Summary of Challenges with the Current Bylaw

A summary of challenges with the current Bylaw follows:

- Administering and enforcing the Bylaw consumes a significant amount of municipal resources
- The Bylaw facilitates matters that are otherwise entirely private, and is used by a very small fraction of the population (60 permits issued in the past 5 years)
- The process is overly complicated, and requires a significant amount of direct involvement from Legal Services and senior management within the ML&S Division
- By actively involving the City in matters of dispute between two property owners, the Bylaw exposes the City to risk in the form of litigation
- Authorizing access to a property owner can result in the neighbouring property owner feeling disempowered (i.e. not having control over what happens on their property)
- Even if the associated permit fees were revised to reflect cost recovery, the City's exposure to litigation - and associated legal expenses - would remain.

Evaluation of potential changes to the Right-of-Entry Process

Based on the challenges with the current Bylaw, ML&S considered two options to revise the current Bylaw: 1. Repeal the Bylaw completely; and 2. Amend the Bylaw to reduce the City's role in these private matters. An analysis of both options follows:

Option 1: Repeal the Bylaw

This option would repeal the right-of-entry provisions in the bylaw completely. The authority to enact a Right-of-Entry Bylaw granted through the City of Toronto Act, 2006 (and the Municipal Act, 2001) is optional; municipalities in Ontario are not obligated to exercise this power. Other major Ontario municipalities that do not have a Right-of-Entry Bylaw include Kitchener, Vaughan, Brampton and Mississauga.

Advantages

- This approach addresses all of the challenges that have been identified with the existing Bylaw.
- The City would remove itself from any role in matters of dispute between two private parties, thus making it a purely private matter for resolution between the affected property owners like most other disputes between individuals.

Disadvantages

Property owners who are unable to obtain consent through mutual agreement; or who do not have a registered easement on title to the adjacent property, would not have a remedy through a City Bylaw and would have to consider any other legal options they may have.

Option 2: Amend the Bylaw

This option would see the Bylaw amended substantially by removing the requirement for a permit and replacing it by limited permissions for entry onto a neighbour's property. Under this approach, all property owners in the City would be authorized to enter adjoining lands to make repairs provided that they comply with certain conditions and requirements. Other municipalities in Ontario that have a Bylaw similar to this approach include Hamilton, Markham and London. The enactment of provisions which clearly outline the extent of permission granted by the Bylaw are fundamental to this approach.

Advantages

- This approach addresses the majority of challenges that have been identified with the existing Bylaw (i.e. it is operationally simple and not resource intensive).

Disadvantages

- Does not completely address a challenge with the existing process, which is that it could result in a neighbouring property owner feeling disempowered.
- The City could still have a role in enforcing matters between two private parties.

Recommended Approach: Repeal the Bylaw

Based on an evaluation of the existing Bylaw, and of alternative options, staff recommend repealing the right-of-entry provisions. There has only been six permits issued in the past two years, indicating that the majority of property owners requiring access are successfully negotiating authorization through alternative mechanisms. This approach limits the need for the City to enforce private right-of-entry matters, which is a complex, resource intensive and time-consuming undertaking. It is expected that the majority of residents would be unaffected by the repeal of this Bylaw.

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SIGNATURE

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