






Hamilton

INFORMATION REPORT

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	July 8, 2020
SUBJECT/REPORT NO:	Residential Encroachments onto the Pipeline Trail Corridor (PW20040/PED20122) (Ward 4)
WARD(S) AFFECTED:	Ward 4
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SUBMITTED BY: SIGNATURE:	Craig Murdoch Director, Environmental Services Public Works Department 
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SUBMITTED BY: SIGNATURE:	Nick Winters Director, Water & Wastewater Operations, Public Works Department 

COUNCIL DIRECTION

Not Applicable

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INFORMATION

Background

The Pipeline Trail corridor is approximately 6 kilometres in length and 20 meters in width, running from Ottawa Street at Main Street diagonally to the Woodward water/wastewater treatment plant on Woodward Avenue. This is City of Hamilton (City) owned property that contains the City's legacy water mains, which are large-diameter cast-iron pipes that were installed between 1859 and 1900.

This corridor also contains open space with an intermittent trail. On September 14, 2014, Council passed a motion to fund the Pipeline Trail Master Plan and directed staff to review opportunities for expansion of the trail and enhance the corridor. This Master Plan was completed in October of 2015.

During the Master Planning process, encroachments by adjacent homeowners onto the trail corridor were identified. Also identified were instances where homeowners are using the trail corridor for vehicular access to the side or rear yards. These issues are being evaluated for maintenance, safety, and design considerations.

Approximately 150 residential properties exist adjacent to the Pipeline Trail Corridor, and about one-third of these have some type of encroachment or safety issue.

During the Master Plan public consultation process, adjacent homeowners expressed concern that the City was going to take away what they perceive as their land, but what is in fact City land. Communications through email and a Town Hall meeting advised these residents that:

1. The land being investigated is already owned by the City of Hamilton, and no land would be expropriated;
2. Prior to implementation, Real Estate and Legal staff would need to carry out due diligence for each property, including but not limited to: property surveys, review of existing encroachment agreements (including validity at present date), and a review of safety concerns; and,
3. That these investigations were not part of the Master Planning scope.

Landscape Architectural Services, Environmental Services Division, Public Works Department has received an approved Capital Budget to implement the Master Plan recommendations for improvement and expansion of the Pipeline Trail. This has prompted the need to address encroachments and move forward with design and construction.

Existing Policy and Legislation

By-law 01-219, To Manage and Regulate Municipal Parks

Section 12 states that no person shall encroach upon or take possession of any park, or any part or area within a park, unless expressly authorized to do so. Where the Director determines that such an encroachment is reasonable in the circumstances and will not be detrimental to the interests of the City, an encroachment may be authorized by permit on such terms and conditions as are appropriate. It also provides for enforcement rights with respect to removing unauthorized encroachments and the collection of costs incurred by the City in respect thereof.

Municipal Act

The City is authorized to enter into license agreements for access/use pursuant to Sections 8, 9 and 10 of the Municipal Act, 2001, which further authorized the City, amongst other things, to delegate its authority and to impose fees or charges on persons for services or activities providing or done by or on behalf of it.

Delegation of Authority to Staff for Routine Real Estate Matters

In accordance with Item 21, Committee of the Whole Report 01-029, adopted by Council on September 18, 2001, and later amended by Item 10 of Report 14-016 of the General Issues Committee, City Council on August 15, 2014, approved the Delegation of Authority to staff for routine real estate matters. That approval includes delegating the authority to approve agreements with abutting homeowners and associated discharges, including but not limited to encroachments, provided that the nature of the agreement is minor as determined by the affected departments and agencies, the form of the agreement is satisfactory to the City Solicitor and all fees as may be required are paid by the applicant.

Encroachment on City Property - Policy and Procedure

In accordance with Report PW11024, adopted by Public Works Committee on April 4, 2011, the Encroachment on City Property Policy and the Encroachment on City Property Procedure were approved. The policy established terms and conditions upon which the City may entertain agreements to permit encroachments in, on, under or above City property. The procedure provided a more detailed overview of the process used by Public Works staff to consider requests for encroachment agreements or for permits to allow temporary access over park lands. Approval of this report also granted the General Manager of Public Works Department authorization and direction to amend the procedure as required.

Information Reports

Information Report PW19100, Land Interests over City-owned Land (City of Hamilton, 2019) gives an overview of adverse possession (AKA "squatter's rights") as it applies to city owned land. This report generally concludes that there is a very stringent legal test to advance a claim based on adverse possession over city owned lands in Ontario.

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Analysis

The Municipal Parks By-law 01-219, Section 12, states that no person shall encroach upon any park, or any part or area within a park, without authorization.

Per the City's Encroachments on City Property Policy, the City generally discourages encroachments on City property unless applicants can prove that the encroachment:

- Is reasonable and feasible;
- No alternative options exist;
- Does not jeopardize the health or safety of the public;
- Is in the public's best interest; and,
- Is minor in nature.

Furthermore, the City's Encroachments on City Property Policy states that the City generally will not enter into an encroachment agreement in instances such as fences, open spaces, and public unassumed alleys, among others.

Based on the policy requirements above, it is not likely the existing encroachments on the Pipeline Trail corridor could be approved because they are not in the public's interest and exist on lands that are functioning as open space, and often pertain to fence encroachments. Furthermore, some encroachments are major in nature and present a health and safety risk to the primary purpose of this corridor, being a water distribution pipeline.

Therefore, an action strategy was needed to determine how encroachments were to be handled. This action strategy is set out below:

Action Strategy

Recognizing Pipeline Trail corridor encroachments exist, the City's goal is to ensure a fair tolerance of encroachments that does not impede on Hamilton Water Infrastructure, does not impact the intentions of the Master Plan, and is safe for both open space users and adjacent homeowners.

Since there are approximately 48 adjacent residential property owners encroaching along the Pipeline Trail corridor, it would take a significant amount of Legal, Real Estate, and Municipal Law Enforcement efforts to remove these encroachments and bring the properties into compliance with existing municipal legislation. As such, a new action strategy has been developed, dividing the encroaching properties into three groups based on level of encroachment, maintenance concerns, and risk to health and safety (and therefore liability risk); each category has its own separate action. This action strategy is summarized in Table 1.

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Table 1 – Summary of Action Strategy for Pipeline Trail Encroachments

Action	Maintenance Restricted?	Encroachment?	Health and Safety Risk?	Liability Risk?
1. Removal	Yes Encroaching features block Hamilton Water maintenance access.	Yes	Yes Lands being used for private space are directly over pipes.	Yes
2. License Agreement for Access/Use	No	Yes	Yes Structures and other features built by adjacent homeowners can be unsafe.	Yes
3. Letter Notification	No	No	Yes Using City land and assets (ex. trails) in an unsafe manner (ex. driving on them).	Yes

1. Removal:

Removal will be pursued in instances where the encroachment is located directly over the water mains or where the encroachment restricts the City’s ability to maintain or renew the infrastructure. Typical examples include use of the city lands for backyard or side yards, fencing, patios, decks, or sheds. Access agreements for a single-wide driveway will be permitted if the adjacent property has no right-of-way frontage, and the driveway already exists.

Removals are necessary in the above instances because:

- a. Adjacent property owners excavating or using vibratory compaction methods over the water mains risk damaging critical city water infrastructure;
- b. Adjacent property owners excavating or using vibratory compaction methods over the water main risk serious injury if the water main were to break; and,
- c. City maintenance staff requires unimpeded access to locate and repair water infrastructure. Encroaching features block views and access.

Hamilton Water staff will be on site to monitor the water mains during all removals that require excavation.

At this time, it is estimated that fewer than ten adjacent homeowners will be impacted by removals.

The process for removals is as follows:

- i. Hamilton Water will issue a letter notifying the adjacent property owner of the encroachment and giving them a timeline for removal including deadlines;
- ii. Geomatics will contract a registered surveyor to delineate the property line and extent of encroachments;
- iii. If the adjacent property owner does not complete removals by the required deadline, Municipal Law Enforcement will issue a ticket/fine and a second deadline will be set; and,
- iv. If the adjacent property owner does not complete removals by the second deadline, Hamilton Water will hire a contractor to complete the removals. This work will be charged to the resident via their property taxes.

2. License Agreement for Access/Use:

License agreements for access/use will be pursued in instances where the existing encroachment is not directly over the City's water mains and City maintenance of infrastructure is not restricted by encroachments. These license agreements are more robust than the encroachment agreements described in the City's Encroachments on City Property - Policy and Procedure Report (PW11024). The license agreements will include use provisions (including what existing features are covered under the license), insurance requirements, and indemnification of the City by the adjacent homeowner.

The license agreement will be registered on the adjacent homeowner's title and they will be required to insure the land they are encroaching upon.

It is highly recommended that the adjacent homeowner review insurance options and costs with their insurance provider prior to pursuing or entering into a license agreement with the City. If costs to insure the encroachment are too high, the adjacent homeowner may be inclined to remove encroachments instead of entering into a licence agreement.

It is important to note that:

- a. These license agreements will only apply to encroaching features that already exist. New encroachments are not permitted and will have to be removed.
- b. Once the encroaching features need replacement, the adjacent homeowner agrees to relocate the features on their own property (the license agreement is not in perpetuity).
- c. The City is permitted to revoke these license agreements at any time.

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If the adjacent homeowner does not wish to enter into a license agreement with the City, the City will order the encroachments to be removed.

At this time, it is estimated that approximately 30-40 license agreements with adjacent homeowners will need to be either created or reviewed.

3. Letter Notification:

Letters will be issued in instances where the Pipeline Trail corridor is being used in an unsafe manner, but not necessarily being encroached on. For example, many adjacent homeowners drive vehicles through the Pipeline Trail corridor to the side or rear yards via the City's trail or grassed area. Such use is unexpected by trail/park users, and therefore presents a safety concern. Driving in parkland is in violation of Municipal Park's By-law 01-219 Section 32(1) and is a safety risk to pedestrians and cyclists using the Pipeline Trail corridor.

At this time, it is estimated that 15-20 letter notifications will need to be distributed to adjacent homeowners.

There are many instances along the Pipeline Trail corridor where registered encroachment agreements exist between the City and adjacent homeowners. Most of these agreements were executed in the late 1970s, when it appears there was a City initiative to do so. Existing agreements will be evaluated by Legal and Real Estate to determine if they are still applicable based on existing conditions. If new encroachments have occurred since original agreements were made, or if the existing agreements are deficient, they may have to be amended, or entirely new agreements may need to be executed. If the encroachments described in these agreements no longer exist, the agreement can be deleted from title.

Costs

Homeowners ordered to remove encroachments will incur the following costs:

- Costs to remove encroaching features (fences, trees, sheds, etc. as required by the City);
- A cost to obtain utility locates in areas of excavation; and,
- In cases where homeowners do not comply with removal requirements, any costs incurred by the City for removal of encroachments will be billed back to the homeowner.

Homeowners pursuing access/use license agreements will incur the following costs:

- A one-time \$1,500 fee to cover City Real Estate and Legal Fees (to offset the City's administrative and processing costs);

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- Subject to staff advice, the cost to have a Reference Plan prepared by an Ontario Land Surveyor and deposited on title;
- Costs of legal services on behalf of the homeowner; and,
- Costs of insurance for the encroached upon land.

The City may incur costs as they relate to:

- The City can accommodate this work using existing Real Estate, Legal, Hamilton Water, Municipal Law Enforcement, and Environmental Services staff;
- For recommended removals, there will be a Geomatics fee of approximately \$100 - 400 per parcel (estimated total of \$1000 - \$4000 for all parcels). This fee covers background data collection and field surveying of encroachments that are to be removed. This will be paid for by the Pipeline Trail Capital Project ID No. 4241409341; and,
- Costs associated with letter/notification distribution and property title searches. This will be paid for by the Pipeline Trail Capital Project ID No. 4241409341.

Next Steps

Evaluation of encroachments across the corridor will ensure fair application of criteria, including consideration that uses do not impede Hamilton Water Infrastructure, do not impact the intent of the Master Plan, and are safe for open space users and adjacent land owners.

City staff will approach two groups first to remedy safety and encroachment concerns:

1. Owners of high-priority properties (multiple safety concerns and moderate to high levels of encroachment); and,
2. Owners of properties located in the Glow Neighbourhood, between Brampton Street and Grace Avenue (the next phase of trail development).

Owners of low- and medium-priority properties will be approached once properties in the two groups above have been addressed, and their issues rectified.

Industrial and commercial encroachments along the Pipeline Trail corridor will be addressed at a later date and are not the focus of this report.

APPENDICES AND SCHEDULES ATTACHED

N/A