

TORONTO STAFF REPORT

June 26, 2000

To: Economic Development and Parks Committee
From: Joe Halstead, Commissioner, Economic Development, Culture and Tourism
Subject: Parkland Encroachment Policy and Procedures
All Wards

Purpose:

To recommend a City-wide parkland encroachment policy and associated procedures.

Financial Implications and Impact Statement :

Recovering the full cost of removing illegal encroachments is proposed. A portion of the administrative costs associated with the Encroachment Review Committee will be recovered through a proposed application fee. Implementation of an enhanced parkland encroachment monitoring, education, and enforcement program will be recommended in the 2001 Operating Budget.

Recommendations :

It is recommended that:

- (1) the parkland encroachment policy and procedures set out in Attachment Nos. 1 and 2 be adopted;
- (2) if the Encroachment Review Committee outlined in this report is approved, Parks and Recreation Division staff be authorized to charge a fee of \$300.00 to process applications to the Encroachment Review Committee;

- (3) the Uniform Parks By-law be revised to state that where the City directs that an encroachment be removed pursuant to the Uniform Parks By-law and the encroachment is not removed as directed, the City may remove the encroachment and install fencing and recover the expense thereof in like manner as municipal taxes, as authorized pursuant to section 326 of the *Municipal Act*;
- (4) this report and Council's actions thereon be forwarded to the Toronto and Region Conservation Authority for information; and
- (5) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

An encroachment occurs when a property owner intrudes on, in, or under the ground space or in the air space of an adjacent City-owned or -managed property, either deliberately or inadvertently. Encroachment results from any use of such City land by individuals for their own purposes. Parkland encroachments may be structural (e.g., construction of decks, pools, and retaining walls), non-structural (e.g., pool drainage, application of pesticides, waste dumping), or vegetative (e.g., planting of vegetable gardens, removal of wildflowers, shrubs, and trees).

Parkland encroachments are of concern because they:

- (a) restrict or limit the use and enjoyment of public lands maintained by the City for the benefit of all residents;
- (b) may pose a safety hazard to the public and give rise to liability claims from resultant injuries;
- (c) may damage the natural environment and undermine the City's stewardship role in protecting natural features;
- (d) may lead to claims of adverse possession and the loss of public assets;
- (e) may destabilize public lands with resultant damage to adjacent private lands;
- (f) may result in taxpayer costs to restore degraded public lands; and
- (g) undermine the City's property management role where the land is owned by others and operated by the City as parkland. About 51% of the City's park system is owned by the Toronto and Region Conservation Authority (TRCA), while another 0.4% is owned by other public agencies and private corporations.

According to the Uniform Parks By-law, the unauthorized use of City property is illegal. The By-law provides the authority to manage and protect all municipal parklands consistently on behalf of the public interest. The By-law states: "Unless authorized by permit, no person shall encroach upon or take possession of any park by any means whatsoever, including the

construction, installation or maintenance of any fence or structure, the dumping or storage of any materials or plantings, or planting, cultivating, grooming or landscaping, thereon.”

Encroachments exist throughout the City’s park system, but are especially prevalent in valley and ravine areas. These areas, representing about 500 linear kilometres of parkland (or half of the total system), contain 1,600 known encroachments and an estimated 1,400 unidentified encroachments. Most of these areas are owned by the TRCA and operated under agreement by the City as parkland. The encroachment problem will be characterized further in a 2001 Operating Budget report on an enhanced parkland encroachment monitoring, education, and enforcement program.

Each of Toronto’s former municipalities handled encroachments in a different manner, though some consistency was achieved with the adoption of the Uniform Parks By-law in 1992. Etobicoke, Scarborough, and Metro adopted formal policies respecting encroachments. North York, York, and East York experienced few cases, in part due to the erection of park fences; North York required new subdivisions and parks to be fenced. Toronto had few ravine encroachments due to property lines generally being placed below the top of slope, but administered numerous tableland encroachments to facilitate private property access.

Metro was a special case because of its extensive valley and ravine parkland system (especially prone to encroachments) which was largely TRCA-owned. In 1989, an Encroachment Review Committee was established as an inter-agency body, composed of senior parks, planning, and TRCA staff, to impartially review encroachments. Recommendations of the Committee were reported out to Metro Council and decisions were subject to the approval of the TRCA.

Comments:

Consistent with the Uniform Parks By-law and the policies and practices of Toronto’s former municipalities, it remains the view of this Department that encroachments on City parklands should not be permitted except in the most unusual of circumstances. This direction provides the basis for the policy and procedures in Attachment Nos. 1 and 2.

Attachment No. 2 outlines a process for resolving encroachments. In practice, encroachments are often resolved through informal meetings between Parks and Recreation staff and property owners. Where agreement cannot be reached, the property owner can request a review by the Encroachment Review Committee.

The Encroachment Review Committee provides a consistent, objective, and transparent mechanism to implement Council’s policy respecting encroachments. The Committee will consist of senior staff representatives from Economic Development, Culture and Tourism, Urban Development Services, Corporate Services, and the TRCA. Ward Councillors will be apprised of the activities of the Committee.

Consistent with the Procedural By-law, Community Councils would hear deputations on Encroachment Review Committee reports and make recommendations to City Council. Final

decision-making authority rests with City Council only where City-owned parkland is affected. Where this is not the case, City Council will make recommendations to the non-City owner of parkland and await a decision by the owner before taking further action.

To offset part of the administrative cost of adjudicating encroachments, property owners should pay a fee of \$300.00 prior to having their case reviewed by the Encroachment Review Committee. This fee level is consistent with fees charged by the Committee of Adjustment for minor variances.

Where an encroachment agreement is authorized, the benefiting party should pay market rent for the encroachment, as well as the full cost of surveys, appraisals, and registration of the agreement on title to the property owner's land.

Where the City directs the encroachment to be removed, ownership of the encroachment is determined, and the owner refuses to remove the encroachment, the City will remove the encroachment and install fencing and, if the owner fails to pay an invoice sent by the City, recover the expense of so doing in like manner as municipal taxes. Authority for recovering expenses in this manner is provided by section 326 of the *Municipal Act*.

The Parks and Recreation Division has the lead responsibility for addressing parkland encroachments. Where necessary, and as funds allow, the Division will install fences on parkland to deter encroachments. Urban Development Services can help control future encroachments by requiring legal surveys when reviewing building permit applications adjacent to parkland, and by requiring that fencing be provided along parkland as a condition of approval when reviewing plan of subdivision and site plan applications.

Conclusions:

This report recommends a harmonized policy to address parkland encroachments. Implemented through an effective monitoring, education, and enforcement program, the proposed policy should ensure that all City parklands are protected and managed consistently in the public interest.

The City Solicitor, the Commissioner of Urban Development Services, the Commissioner of Corporate Services, and the Chief Administrative Officer of the TRCA have been consulted in the preparation of this report.

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Joe Halstead
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List of Attachments:

Attachment No. 1 – Parkland Encroachment Policy and Procedures
Attachment No. 2 – Protocol for Resolving Parkland Encroachments

Parkland Encroachment Policy and Procedures

1. This policy applies to all land and land covered by water meeting the definition of “park” in the Uniform Parks By-law.
2. Existing unauthorized encroachments will continue to be removed from City parkland, and the Commissioner of Economic Development, Culture and Tourism will implement this policy.
3. Registered letters sent to abutting property owners requesting removal of encroachments existing as of the date of adoption by Council of this policy will also contain a copy of this policy, including notification of the protocol for resolving parkland encroachments.
4. The Encroachment Review Committee will be composed of: Director, Central Services, Economic Development, Culture and Tourism; Executive Director and Chief Planner, City Planning Division, Urban Development Services or designate; Director, Real Estate, Corporate Services; and Chief Administrative Officer, Toronto and Region Conservation Authority.
5. The terms of reference for the Encroachment Review Committee are:
 - (a) It is a general policy that encroachments be removed from City parkland.
 - (b) The protocol for resolving parkland encroachments (Attachment No. 2 of this report) will be followed.
 - (c) In exceptional circumstances, the Encroachment Review Committee may consider recommending a licence of occupation, sale, or exchange of lands for reasons of safety, security, straightening boundary lines, or where it is of mutual benefit to the City and the abutting property owner.
 - (d) Recommendations of the Encroachment Review Committee proposing a licence of occupation, sale, or exchange of lands will be reported to the appropriate Community Council.
 - (e) The Encroachment Review Committee will receive written or oral submissions, and the Ward Councillor(s) will be notified as to when and where the review will take place and the actions taken by the Committee.
6. A licence of occupation may be permitted for a term of five (5) years or until the abutting land is sold. The licence may be renewed upon the request of the encroaching person. Upon the expiry or termination of the agreement, the encroaching person shall remove the encroachment and restore the parkland to its natural condition, all at that person’s

expense. Licences of occupation will be registered on title, and the encroaching person will pay all costs, including survey, appraisal, and registration costs. The rent will be calculated at market value by the Facilities and Real Estate Division of Corporate Services.

7. To deter future encroachments or correct existing encroachments in developed areas, the Commissioner of Economic Development, Culture and Tourism will install fences on City property, as appropriate and as funds allow.
8. The Commissioner of Urban Development Services will require legal surveys and have regard to the encroachments section of the Uniform Parks By-law when considering the issuance of building permits for structures adjacent to City parkland.
9. When reviewing plan of subdivision and site plan applications adjacent to City parkland, the Commissioner of Urban Development Services will require the proponent to provide fencing along the park boundary to the satisfaction of the Commissioner of Economic Development, Culture and Tourism as a condition of approval.