

Staff Report 2022-0091

Meeting Date: April 19, 2022

Subject: Proposed Encroachment By-law and Amendments to Clean Yards By-law 2016-063

Submitted By: Dain Watson, Analyst, Municipal Law Enforcement

RECOMMENDATION

That the proposed Encroachment By-law attached as Schedule A to Staff Report 2022-0091 be enacted to take effect June 1, 2022;

That a by-law be enacted to amend Town's Clean Yards By-law 2016-63 attached as Schedule B to Staff Report 2022-0091;

That a by-law be enacted to amend the Town's 2022 Fees and Charges By-law 2021-87, as amended, as outlined in Schedule E to Staff Report 2022-0091 to include a new non-refundable fee of \$500.00 - Encroachment Permit Application Fee; and

That the proposed new Encroachment By-law, amendments to the Clean Yards By-law and proposed new fee take effect on June 1, 2022.

REPORT HIGHLIGHTS

- Section 64 of the Traffic By-law 2015-58, as amended prohibits any encroachment on boulevards.
- The proposed Encroachment By-law takes a more permissive rather than restrictive approach.
- Staff assessed encroachment by-laws from eight (8) municipalities and boulevard maintenance by-laws from ten (10) municipalities as part of the review process.
- Staff held an Open House and posted a survey online for public engagement.
- Minor encroachments such as gardens, mulch and tree rings will be permitted, and all other types of encroachments will require a permit.
- The proposed Clean Yards By-law Amendment requires property owners to maintain the boulevard grass.
- Operations staff will continue to cut the boulevard grass in areas currently included their maintenance plan.
- Grass complaints for properties larger than 1 acre in size will now be enforced under the Clean Yards By-law.

DISCUSSION

Background

The purpose of this report is to provide for Council's consideration the new proposed Encroachment By-law attached as Schedule A and the proposed By-law Amendment to Clean Yards By-law 2016-63 attached as Schedule B. The objective of the proposed

Encroachment By-law is to provide clear guidelines and regulation of encroachments on Town boulevards. The Traffic By-law 2015-58, as amended is currently very restrictive and prohibitive with respect to residents encroaching onto the boulevard with any alterations or landscaping. Because of this, staff in Municipal Law Enforcement have become inundated over the years with complaints regarding property owners making alterations to the boulevards adjacent to their property. Since this is a violation under Section 64 of the Traffic By-law, investigations have led to many property owners being required to remove such alterations even though they have no negative impact from a safety or operational perspective, and in many instances have actually improved or added to the streetscape. Considering this, the proposed Encroachment By-law takes a more permissive approach by allowing certain 'minor' encroachments on the boulevards and includes a permit process to give property owners an opportunity to apply for a permit for any encroachment that is not considered 'minor'.

To compliment the implementation of the Encroachment By-law, updates to the Clean Yards By-law are naturally occurring with respect to boulevard maintenance. The objective of the proposed amendments to the Clean Yards By-law is to include provisions that will require property owners to maintain the boulevards adjacent to their properties by ensuring the grass does not exceed twenty (20) centimetres in height and keeping the boulevard free of any garbage or debris.

Assessment of Other Municipalities

During the research process, a jurisdictional scan was undertaken in preparation for the drafting of the proposed Encroachment By-law and the proposed Clean Yards By-law Amendment. To complete a fulsome review, encroachment by-laws from eight (8) local municipalities were primarily used as examples for benchmarking including Mississauga, Toronto, Guelph, Vaughan, Kingston, Ottawa, Port Colborne and East Gwillimbury.

Further, clean yards and boulevard maintenance by-laws from ten (10) local municipalities were assessed including Brampton, Mississauga, Newmarket, King City, Clarington, Whitby, Pickering, Niagara on the Lake, East Gwillimbury and Renfrew. All of which include boulevard maintenance standards that holds property owners responsible for ensuring the grass does not exceed a certain height. As such, the review identified that the current Clean Yards By-law is missing a common requirement that should be considered standard in any yard maintenance by-law. The proposed Encroachment By-law and Clean Yards By-law Amendment represents a compilation of the best practices which, in consultation with the public and internal staff, have been adapted to meet the specific needs of the Town.

Stakeholder Engagement

A draft of the proposed Encroachment By-law and Clean Yards By-law Amendment were presented to the public at an Open House on March 3, 2022. In advance of the Open House, notice including draft copies of the By-laws were posted on the Town's website and was further advertised through newspaper and social media. Advertisements highlighted key proposed changes and invited the public to review the draft By-laws. Following the conclusion of the presentation by staff at the Open House, a few attendees posed questions to get clarification on the reasons the By-laws were drafted as well as to inquire on what the enforcement process would look like.

To further assess public opinion and provide residents an opportunity to give feedback, staff developed an online survey which was available for a total of thirty (30) days. Questions were posed on the public's interest in being able to landscape the boulevard and their view on property owners being required to maintain the boulevard grass. Key findings of the survey include significant interest in landscaping the boulevard with native Ontario and pollinator-friendly plants. Further, 82% of respondents indicated they already cut the boulevard grass as part of their regular lawn maintenance and are in support of the Town making this a requirement that can be enforced. Finally, some respondents expressed concern with hard landscaping being permitted and thus used for the parking of vehicles. While an initial draft of the Encroachment By-law included hard landscaping as a minor encroachment, this has been removed following public feedback and internal review.

To ensure efficient administration and enforcement of the proposed By-laws, Municipal Law Enforcement staff, as well as the Operations and Engineering Departments and the Legal Division were consulted throughout the development of the By-laws. In addition, staff from the Energy and Environment Division were also consulted for their expertise on the environmental benefits of permitting residents to plant gardens on the boulevard.

Encroachment By-law

Minor Encroachments

In the proposed By-law, minor encroachments are permitted without the requirement of a permit, so long as they meet certain maintenance standards. One of such minor encroachments includes soft landscaping which allows property owners to plant gardens in the boulevards adjacent to their properties. If an owner chooses to plant a garden in the adjacent boulevard, it will be their responsibility to ensure the height of the plants do not exceed one hundred (100) centimetres for sightline purposes; is planted at grade with the sidewalk to prevent soil, mulch or other material run-off onto the sidewalk; has a minimum setback of thirty (30) centimetres from the sidewalk; and does not consist of any noxious weeds or invasive plant species.

Boulevard gardens will not only add to the beautification of the streetscape, but they also improve the health of the ecosystem as property owners will be able to plant pollinator-friendly gardens. This is important considering pollinator populations have drastically declined from loss of habitat, disease and widespread use of chemicals. Pollinators are vital to the ecosystem for a number of reasons:

- Pollinators such as butterflies, birds and bees help farmers grow produce;
- 75% of all flowering plants rely on pollinators; and
- Native plants in pollinator gardens support pollinating insects at every stage of their lifecycle and these insects will help flowering plants produce fruit and seeds by spreading pollen from one plant to another. Therefore, apples, blueberries, strawberries and squash would not be able to produce fruit without wild pollinators.

As currently written, Section 64 of the Traffic By-law does not permit property owners to replace any dead grass on the adjacent boulevard as this is considered altering or landscaping. Since grass is included in the definition of soft landscaping, property owners will be able to lay fresh sod to replace any existing dead grass on the adjacent boulevard. By the proposed Encroachment By-law being more permissive in this aspect, property owners will be encouraged to ensure their adjacent boulevard has rich and lush green grass, thus further beautifying their neighborhoods and the Town.

Many properties currently have Town owned trees planted in the adjacent boulevard. Placing mulch or wood chips around the base of these trees is considered a minor encroachment in the proposed By-law. Along with the positive visual impact, mulching protects the trunk of these trees by limiting damage from lawnmowers and trimmers. Further, tree rings are also permitted as a minor encroachment, as these also add a layer of protection and provides a neat and tidy border around the base of the trees that will prevent the movement of any mulch or wood chips. Amongst other minimum requirements, property owners will be required to ensure the tree rings are a minimum setback of thirty (30) centimetres from the sidewalk to prevent any obstruction of wheelchairs, scooters or snow clearing equipment.

Although each minor encroachment has specific maintenance standards, there are also general prohibitions included in the proposed By-law that property owners are required to comply with. These general prohibitions ensure the minor encroachments do not obstruct sightlines, extend onto the boulevard fronting their neighbor's property or obstruct Town operations, access to fire hydrants, post office boxes or installations by the Town, Region or utility providers. Further, the minor encroachments cannot be sharp or dangerous in any way and are also prohibited from being placed or planted in any ditch or swale.

Encroachment Permits

For any encroachment that is not considered a minor encroachment, the proposed By-law includes a process to which property owners may apply for a permit. To obtain an

encroachment permit, an application along with other supplementary documents and the application fee will need to be submitted to be reviewed by the Director. In the proposed By-law, the Director is defined as the Director, Engineering Services or the Director, Operations, acting either individually or together. This follows the same model as the Traffic By-law, where permits to perform work on highways are reviewed by the Director, which has the same definition. It is imperative that both departments are involved in the review process of the encroachment permit, as they both have responsibilities and interests with respect to Town infrastructure.

Following conditional approval, the applicant will be required to provide proof of insurance and in some instance depending on the complexity of the encroachment, will be required to enter into an Encroachment Agreement with the Town. Further, a security deposit will be required and will be held until the Director is satisfied that the boulevard is left in a proper state and the works completed is to the required standards. In the case where the work completed does not meet these standards, the Director may use the deposit to engage contractors to repair or restore the boulevard.

It is proposed that the 2022 Fees By-law be amended to include a non-refundable \$500 application fee. This is in line with other municipalities and application fees currently in the Fees By-law with similar processes. For example, the Fill Permit application that includes an in-depth review by the Engineering Department is \$510, which appropriately covers the time required to complete a fulsome review of each application.

Enforcement

Although the Operations and Engineering Services departments will be responsible for processing permit applications, any enforcement action will be the responsibility of Municipal Law Enforcement Officers (Officers). The Officers will have the ability to issue orders to direct property owners to discontinue any unauthorized encroachments and to restore the boulevard to its original state. For any non-compliance, the Officers have remedial action provisions at their disposal to engage contractors to bring the boulevard into compliance. Any costs incurred would then be added to the tax roll and collected by the Town in the same manner as property taxes. Further, the Officers will also be able to lay Part I or Part III charges against any non-compliant property owner.

Traffic By-law

To ensure consistency and avoid conflicting rules, the proposed By-law includes a section for consequential amendments in which Section 64 of the Traffic By-law is amended. This makes it clear that the altering, disturbing, injuring or landscaping of the boulevard is not permitted unless in accordance with the Encroachment By-law.

Amendments to Clean Yards By-law

Boulevard Maintenance

As currently written, the Clean Yards By-law requires property owners to maintain their yard free of tall grass, which is defined as grass exceeding twenty (20) centimetres in height. The proposed amendments will require property owners to also maintain the boulevard grass to not exceed this height. Such a change will have minimal effects on most property owners in the Town, as majority already maintain the boulevard grass as part of their lawn maintenance, as evident by the online survey. Further, since the proposed Encroachment By-law gives property owners the ability to plant encroachments in the boulevard and with that comes maintenance expectations, it is natural and reasonable to also require the grass to be maintained as well. All ten (10) of the bylaws assessed from local municipalities require property owners to also maintain the boulevard grass and has thus become a standard requirement.

It is important to note that despite this amendment, staff in the Operations department will continue to cut the boulevard grass in certain areas as part of their existing maintenance plan (these areas are highlighted in the maps attached to this report as Schedule D). Therefore, this amendment applies to boulevards currently not maintained by the Town and are currently expected to be cut by the owner of the abutting property. This expectation will now also be a written requirement in the By-law with an enforcement process behind it for non-compliance that includes the issuance of an order, laying of charges or remedial action. Further, properties zoned Agricultural or Rural are exempt from this boulevard grass cutting requirement considering the growth of the natural vegetation in these rural areas are a part of the streetscape.

In addition to boulevard grass cutting, the Amending By-law also requires property owners to maintain the boulevard free of refuse (e.g. litter, animal excrement or vehicle parts). This will further keep neighborhoods neat and tidy and contribute to the beautification of the Town, as well as ease the burden on Operations staff attending to frivolous service requests relating to boulevard maintenance.

General Updates

There are a handful of new definitions in the Amending By-law including *adjacent boulevard*, *boulevard*, *highway*, *tall grass* and *Zoning By-law*. All of which have been added to not only ensure consistency with the proposed Encroachment By-law, but also for administration and enforcement purposes. Further, Section 6 of the Clean Yards By-law has been deleted, as this section requires every owner of land less than 0.4 hectares or 1 acre in size to maintain the yard free of tall grass. As such, grass cutting requirements do not apply to properties larger than 1 acre. This has resulted in enforcement challenges for Municipal Law Enforcement staff, as larger properties with tall grass complaints (e.g.

open fields owned by developers who won't commence development of homes for another few years) are instead investigated and enforced under the Property Standards By-law 98-155, as amended, which includes an appeal process that can cause these complaint files to be drawn out over several months. Complainants and neighboring residents understandably become frustrated in these instances, as they expect grass complaints to be dealt with efficiently. Therefore, the Amending By-law replaces section 6 with "every owner shall maintain the yard free of tall grass". By removing the 1 acre size limitation, larger properties with tall grass complaints can now be efficiently enforced under the Clean Yards By-law.

Next Steps

Should Council approve the recommendations presented in this report, staff will bring forward the new Encroachment By-law attached as Schedule A and Clean Yards By-law Amendment attached as Schedule B for consideration to take effect June 1, 2022. Further, set fines will be developed to support enforcement and the adoption of the new Encroachment By-law will be communicated to residents through a communication plan that includes social media and other media outlets.

Finally, the Town's website will be updated to reflect the changes, and additional communication to residents on the new provisions within the Clean Yards By-law and expectations regarding boulevard maintenance will be released.

FINANCIAL IMPLICATIONS

Fine and permit revenue is expected to be minimal therefore no budget implications are expected. There is a new fee of \$500 for an Encroachment Permit Application Fee (non-refundable) being proposed to recover Operations and Engineering Staff's time to review the application.

COUNCIL WORK PLAN

Good Governance

Update and standardize by-laws, including implementation, to meet best practices of other municipalities.

ATTACHMENTS

- Schedule A: Proposed Encroachment By-law
- Schedule B: Proposed Clean Yards By-law Amendment
- Schedule C: Online Survey Results
- Schedule D: Operations Department Boulevard Maintenance Map
- Schedule E: Proposed 2022 Fees By-law Amendment