

THE CORPORATION OF THE
CITY OF WHITE ROCK
CORPORATE REPORT



DATE: September 20, 2021

TO: Governance and Legislation Committee

FROM: Jim Gordon, P.Eng., Director, Engineering & Municipal Operations

SUBJECT: Property Encroachment on City Land Update

RECOMMENDATIONS

THAT the Governance and Legislation Committee:

1. Endorse, staff continuing to administer the Street and Traffic Bylaw with respect to new encroachments and at the time of redevelopment.
 2. Provide direction on whether exceptions to the Street and Traffic Bylaw for minor encroachments be considered on a case by case basis through Encroachment Agreements that set out annual insurance requirements, maintenance, property rental and unilateral termination by the City, and whether property rental rates of \$10/ft to be included in the Fees and Charges Bylaw.
-

EXECUTIVE SUMMARY

Council gave direction on November 18, 2019 that staff administer the Street and Traffic Bylaw with respect to new encroachments as well as at the time of property redevelopment. Further to this direction, the Governance and Legislation Committee met on July 12, 2021 and requested a Corporate Report that reviews the definition of encroachments and the potential for exclusions to be defined in the Bylaw and that an application and permitting process be considered for exceptions to the Bylaw. Attached as Appendix A is an excerpt from the July 12, 2021 Governance & Legislation Meeting Minutes.

PREVIOUS COUNCIL DIRECTION

Motion # & Meeting Date	Motion Details
2019-528 November 18, 2019	Directs staff to continue to administer the Street and Traffic Bylaw with respect to new encroachments as well as at the time of property redevelopment.
2021-G/L-071 July 12, 2021	THAT the Governance and Legislation Committee direct staff to bring forward a corporate report that reviews the definition of encroachments, consideration of small bushes, irrigation being excluded as an encroachment, if the encroachment bring beauty for the City, as well as any safety/ legal concerns. Motion CARRIED (7 to 0)

INTRODUCTION/BACKGROUND

Encroachments are defined in Investopedia as:

“The term encroachment refers to a situation in real estate where a property owner violates the property rights of his neighbor by building on or extending a structure to the neighbor's land or property intentionally or otherwise. Encroachment is often a problem along disputed property lines where a person intentionally chooses to violate his neighbor's boundaries, or when a property owner is not aware of his boundaries.”

Section 35 of the Street and Traffic Bylaw addresses encroachments:

“No person shall excavate in, cause a nuisance on, encumber, obstruct, injure, foul, improve or damage any portion of any highway, or other public place, without first obtaining a Permit.”

Permits are intended for temporary construction works or driveways. If Council decides to allow long term encroachments, an Encroachment Agreement would be required.

Staff continue to administer the Street and Traffic Bylaw with respect to new encroachments and at the time of redevelopment. This Council direction is nuanced to include administering the Bylaw in situations where encroachments affect Council projects such as the Centre Street Walkway Upgrade.

Concern was expressed at the July 12, 2021 Governance and Legislation meeting about encroachments along road ends. Questions were also raised about potential exclusions to the Bylaw and a permitting mechanism for exceptions.

DISCUSSION

The Corporate Report dated November 18, 2019, “Preserving Road Right of Ways for a Sustainable City” attached as Appendix B provides details on the importance of maintaining public right of ways from an environmental perspective and for public use, such as sidewalks, utilities, bus stops etc. Further to this report, an argument can also be made that public property, including right of ways, should not be given away without compensation.

Some encroachments, including irrigation or small bushes, could be considered improvements for public benefit; however, they do pose legal liability for the City and present long term entitlement challenges if allowed to remain. If Council decides to allow these types of encroachments, they can be permitted on a case by case basis through Encroachment Agreements that set out annual insurance requirements, maintenance, property rental and unilateral termination by the City. A small number of these Agreements currently exist; however, they need to be brought up to date and administered annually to ensure that all Agreement provisions are consistent, enforceable and followed.

Although members of the Governance and Legislation Committee asked that small bushes or shrubs be excluded from application of the Bylaw, this is not recommended as these bushes still present liability to the City, could grow to present challenges, and preclude public use of the publicly owned right of way without compensation. A better solution would be to consider providing exceptions for these installations by Encroachment Agreements on a case by case basis.

Members of The Governance and Legislation Committee also noted significant encroachments on City road ends. These can best be addressed through roadway upgrades such as the Centre Street Walkway Upgrade and included in the Financial Planning Process.

FINANCIAL IMPLICATIONS

There are ongoing staffing costs incurred in administering the Street and Traffic Bylaw with respect to encroachments. Providing a process for exceptions by Encroachment Agreement will incur additional staff costs but these could be recovered through the implementation of rental fees.

Given that a sample of land values in White Rock for 2020 ranged from \$180/ft to \$200/ft and a low return on investment (ROI) of 5%, a case could be made for annual rental rates of approximately \$10/ft. For example, a rental rate for a two foot encroachment on a 66 foot lot would be approximately \$1,300 per year.

LEGAL IMPLICATIONS

Allowing new encroachments increases the City's liability risk. Encroachment Agreements provide a mechanism to mitigate risk to the City should Council decide to make exceptions to the Street and Traffic Bylaw.

COMMUNICATION AND COMMUNITY ENGAGEMENT IMPLICATIONS

If Council decides to change direction, communication could be made through the City website, e-newsletter, newspaper ads, or mailouts.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS

In extreme cases, the Bylaw Division of the Planning and Development Department would be requested to assist with Street and Traffic Bylaw enforcement.

CLIMATE CHANGE IMPLICATIONS

Climate change implications are noted in the November 18, 2019 Corporate Report "Preserving Road Right of Ways for a Sustainable City". Many of these considerations, especially the importance of stormwater infiltration and preservation of tree canopy, were discussed in detail at the Environmental Advisory Committee (EAC).

ALIGNMENT WITH STRATEGIC PRIORITIES

Administering the Street and Traffic Bylaw with respect to new encroachments and at the time of redevelopment is consistent with Council's Environmental Strategic Priorities.

OPTIONS / RISKS / ALTERNATIVES

It is recommended that Council direct staff to continue administering the Street and Traffic Bylaw with respect to new encroachments and at the time of redevelopment. If Council wishes to make exceptions to the Street and Traffic Bylaw for minor encroachments, it is recommended that these be permitted on a case by case basis through Encroachment Agreements that set out annual insurance requirements, maintenance, property rental and unilateral termination by the City along with proposed property rental rates of \$10/ft that would be included in the Fees and Charges Bylaw.

The following alternative options are available for Council's consideration:

1. Direct the discontinuation of Street and Traffic Bylaw administration and allow new encroachments, exposing the City to increased risk and loss of public space.
2. Direct that all existing encroachments be removed. This would involve the hiring of numerous additional staff to address the approximate 800 existing encroachments (approximately 20% of properties).
3. Define exclusions to the Bylaw such as small shrubs; however, this would expose the City to increased legal liability and future difficulties if the boulevard is required for community purposes.

CONCLUSION

The Corporate Report dated November 18, 2019, "Preserving Road Right of Ways for a Sustainable City" attached as Appendix A provides details on the importance of maintaining public right of ways from an environmental perspective, and for public use, such as sidewalks, utilities, bus stops etc. Further to this report, an argument can also be made that public property, including right of ways, should not be given away without compensation.

It is recommended that Council direct staff to continue administering the Street and Traffic Bylaw with respect to new encroachments and at the time of redevelopment.

If Council wishes to make exceptions to the Street and Traffic Bylaw for minor encroachments, it is recommended that these be permitted on a case by case basis through Encroachment Agreements that set out annual insurance requirements, maintenance, property rental and unilateral termination by the City along with charging proposed property rental rates of \$10/ft to be included in the Fees and Charges Bylaw.

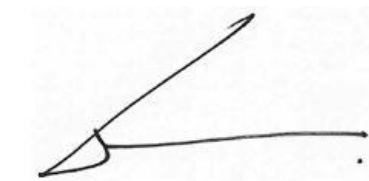
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jim Gordon', with a stylized, flowing script.

Jim Gordon, P.Eng.,
Director, Engineering & Municipal Operations

Comments from the Chief Administrative Officer

I concur with the recommendations of this corporate report.

A handwritten signature in black ink, appearing to read 'Guillermo Ferrero', with a stylized, angular script.

Guillermo Ferrero
Chief Administrative Officer

Appendix A: Minutes Excerpt from July 12, 2021 Governance & Legislation Meeting
Appendix B: Preserving Road Right of Ways for a Sustainable City Corporate Report dated
November 18, 2019

APPENDIX A

Minutes Excerpt from July 12, 2021 Governance & Legislation Meeting

5. ENCROACHMENTS

Councillor Manning requested this item be brought to the Committee for discussion.

The Director of Engineering and Municipal Operations notes that *"staff continue to administer the Street and Traffic Bylaw provisions as per Council direction in November 2019. Specifically, we **"administer the Street and Traffic Bylaw with respect to new encroachments as well as at the time of property redevelopment."***

Discussion ensued, and the following points were noted:

- Staff clarified that having clear direction from Council on this topic would be helpful in terms of enforcement.
- Types of encroachments were discussed. For example, differences were noted in adding a fence around an encroachment compared to the planting of a small shrub.
- Encroachments that impact Council priorities, such as Centre Street Walkway project, would need to be enforced. Communication surrounding why this is happening (beatification of the City) may help residents understand this process.
- Want to stop the proliferation of new encroachments, hard to take back old encroachments unless there is a project underway that could effect this.

- Road ends should be prioritized and re-utilized/ promoted by the City.
- Having consistency with enforcement for encroachments is important.
- Harder to restore previous encroachments, but can draw a line with new encroachments to ensure that these are not permitted moving forward. Staff clarified that currently no encroachment are “permitted”.

3

-
- The definition of encroachments in the City needs to be reviewed and discussed. For those residents with an encroachment on their property, they need to be aware that this is City property and as such the City has the right to remove it if required.
 - New wording within the Street and Traffic bylaw was encouraged, which provides guidance as to what is acceptable and what is not. Also suggested that an application process/ permitting process be considered for exceptions. If there is a permit there is wording to notify that the City still has the right to take back the land at any time at their expense.

Motion Number: 2021-G/L-071

It was MOVED and SECONDED

THAT the Governance and Legislation Committee direct staff to bring forward a corporate report that reviews the definition of encroachments, consideration of small bushes, irrigation being excluded as an encroachment, if the encroachment bring beauty for the City, as well as any safety/ legal concerns.

Motion CARRIED (7 to 0)

APPENDIX B

Preserving Road Right of Ways for a Sustainable City Corporate Report dated November 18, 2019