

<b>Policy No:</b>	<b>DE – 012</b>
<b>Department:</b>	<b>DEVELOPMENT ENGINEERING</b>
<b>Subject:</b>	<b>ENCROACHMENT POLICY</b>



**Encroachment Policy**  
April 12, 2005

**DRAFT**  
**ver 4**

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**POLICY STATEMENT:**

It is the general policy of the City of Vaughan that all unauthorized encroachments on Public Lands or easements shall be removed and any incurred expenses recovered from the responsible owner. Where conditions warrant an Encroachment Permit or Encroachment Agreement may be approved and in very special cases, the City may also consider the sale of Public Land. To mitigate the occurrence of encroachment onto Public Land a Corporate communication strategy shall be adopted to inform and educate the public. In so doing the City retains its obligation to preserving Public Lands and easements by preserving environmental, operational, safety and Departmental concerns.

**PURPOSE:**

This policy outlines definitions, a communication strategy, related policies/ by-laws, exemptions and enforcement along with a procedure to (a) identify and investigate encroachments, (b) administer encroachments by removal or authorization, and (c) prepare Encroachment Permits or Encroachment Agreements, where appropriate. The policy shall also be read, when required, as a companion to the by-law to provide additional background information.

This policy is also a mechanism to:

- Control any unauthorized or illegal encroachments, however caused
- Recover costs incurred in administering Encroachment Permits and Encroachment Agreements
- Collect market rents for authorized encroachments
- Minimize the opportunity of litigation claims associated with encroachments
- Minimize the opportunity for claims of adverse possession.

**COMMUNICATION STRATEGY:**

The City's objective is to inform and educate all property owners in the City of Vaughan including staff of the new Encroachment By-law, thus promoting City Council's commitment to community safety and the protection of Public Lands from unauthorized use by abutting private property owners. The primary means to deliver this message shall be through the development and distribution of an information brochure, which will be available at all City owned public facilities and may be inserted within the City's water billings from time to time as well as being distributed to all new Vaughan residents. In addition, this information and Encroachment By-law shall be available on the City's web site and included in the Vaughan Community Information Guide along with being posted on a staggered basis or as required on the City Page of the local community newspaper and other communication outlets.

**DEFINITIONS:**

In the context of this policy the following terms are defined:

<u>Alter</u>	Means a change in grading form or substance from its original state.
<u>City:</u>	Means the Corporation of the City of Vaughan, in the Regional Municipality of York.
<u>City Solicitor:</u>	Means the head of the City's Legal Services Department and shall include his or her designate.
<u>Commissioner:</u>	Means the City's Commissioner of Legal & Administrative Services and shall include his or her designate.
<u>Complex Encroachment:</u>	Means a major encroachment as determined by the City.
<u>CSMS Application:</u>	Means the Customer Services Management System (CSMS) computer program used by the City to track resolutions of complaints or inquiries.
<u>Easement:</u>	Means an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence.

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- Encroachment: Means any type of landscaping or vegetation, natural or man-made object(s) or item(s) of *Personal Property* of a *Person*, which exists or is located wholly upon, or extends from a person's premises onto, *Public Lands* and shall include any aerial, surface or subsurface encroachments.
- i) Aerial encroachment means an encroachment that is located at least 300 millimetres (12 inches) above the surface of public lands.
  - ii) Surface encroachment means an encroachment that is located anywhere between the following: the surface of public lands to a height less than 300 millimetres (12 inches) and beneath the surface of public lands to a depth of not more than 25 millimetres (1 inch).
  - iii) Sub-surface encroachment means an encroachment that is located beneath the surface of public lands to a depth exceeding 25 millimetres (1 inch).
- Encroachment Agreement: Means an agreement prepared for execution by the City and a person granted authorization to erect, place, alter or continue a Complex Encroachment.
- Encroachment Permit: Means a license (permit) prepared for execution by the City and a person granted authorization to erect, place, alter or continue a Simple Encroachment.
- Expenses: Means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, application fees, administration fees, dispute resolution/ mediation fees, survey fees, taxes, outlays, legal fees and losses.
- Fence of Open Construction: Means a fence constructed so that at least one third (1/3) of its vertical surface area is open space, enabling motorists and pedestrians to have a clear view through such fence.
- Municipal Enforcement Officer: Means a person appointed or employed by the City as a municipal law enforcement officer under Section 15 of the Police Services Act, R.S.O. 1990, c.P.15, as amended.
- Notice: Means any notice required to be given by the City to the Owner with respect to this by-law, such notice shall either be delivered or sent by prepaid registered mail as per the Clerk's Department information or such other address as the Owner has given the Clerk's Department. Such notice shall have been deemed delivered on the third business day after mailing.
- Owner: Means the registered owner of a parcel of property as such person is described in the records of the land registry office.
- Person: Means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the *Interpretation Act* of Ontario, as amended, but specifically excludes the City.
- Personal Property: Means any object or item of property other than real property.
- Premises: Means a parcel of real property under registered ownership and includes all buildings and structures thereon.
- Public Lands: Means lands owned by the City, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or

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trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk but does not include property owned by the Regional, Provincial, Federal Government, a Crown Corporation, Hydro, Utility or Railway Company.

- Encroachment:** A committee that meets when required to deal with encroachment matters or other real estate issues and may contain members from Engineering, Public Works, Legal, Parks, Planning, Buildings and when required any Council Member.
- Right-of-Way:** Means a *Person's* legal right, established by usage or by contract, to pass through grounds or property owned by another *Person*.
- Sight Triangle:** Means the area of *Public Lands* abutting the corner of a lot enclosed by the projection of each property lot line.
- Simple Encroachment:** Means a minor encroachment as determined by the City.
- Temporary Permit:** Means a Road Occupancy Permit or other *City* permit to manage the activities on or adjacent to *Public Lands*;
- Unauthorized Encroachment:** Means any *Encroachment* not authorized by the "Encroachment By-law".
- Woodlands:** Land covered with trees or forest or other naturalized vegetation.

**RELATED POLICIES AND PRACTICES/ BYLAWS:**

- Highway and Boulevard Prohibitions By-law 358-86
- Open Space/ Parkland Encroachment Policy – July 4, 1994
- Road Cut Permits By-law 294-94 (To be updated by the future Road Occupancy Permit By-law)
- "Vaughan Parks By-law" 134-95, as amended
- "Fees & Charges By-law" 396-2002 as amended
- "Public Property Sign By-law" 178-2003 & 203-92 as amended
- "Property Standards By-law" 409-99 as amended
- "Littering and Dumping By-law" 3-2004
- "Newspaper Box By-law" 372-2004
- "Public Property Tree Protection By-law" \_\_\_\_ - 2005

**ENCROACHMENTS PROHIBITED AND EXEMPTIONS:**

Whether deliberately or inadvertently no *Person* shall erect, place, or continue, or cause to be erected, placed, or continue, an encroachment of any kind on *Public Lands*, or *Easements* in favour of the *City*, except where permitted to do so in accordance with this by-law.

In addition, whether deliberately or inadvertently no *Person* shall *Alter* or cause to be *Altered*, an encroachment of any kind on *Public Lands*, or *Easements* in favour of the *City*, except where permitted to do so in accordance with this by-law.

Notwithstanding the above, the provisions of this policy/ by-law do not apply to the following classes of encroachments:

- i) Signs, as authorized through By-law Number 178-2003, known as the "Public Property Sign By-Law" and By-law 203-92 as amended;
- ii) Waste, as authorized through By-law Number 3-2004, known as the "Littering and Dumping By-law";
- iii) Maintenance and occupancy of property, as authorized through By-law 409-99, as amended, known as the "Property Standards By-law".

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- iv) Newspaper boxes, as authorized through By-law Number 372-2004, known as the "Newspaper Box By-Law";
- v) Properties which are designated by City By-law as being of historic or architectural value or interest pursuant to the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended;
- vi) A temporary encroachment arising as a result of construction, maintenance or other activity as authorized under a valid temporary permit issued by the City;
- vii) Encroachment permitted as a result of a written and signed agreement with the City, other than an Encroachment Permit or Encroachment Agreement;
- viii) Encroachment arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen his or her driveway, provided a Curb Cut Application/ Permit from the City is also issued to the owner; and
- ix) Encroachment arising from surface changes made in connection with residential driveways, provided such encroachments have not been constructed within the *Sight Triangle* and does not breach any other municipal by-law or regulation.

**IDENTIFICATION:**

Encroachments shall be identified by either City staff while performing their daily duties and/ or by the Enforcement Services Department (Municipal Enforcement Officer) in response to inquiries by City staff or the Public along with any legal documents, compliance letters, aerial photographs, surveys, visual inspections, complaints or information from internal and external sources, howsoever provided.

**ADMINISTRATION OF ENCROACHMENTS:**

To initiate an encroachment review, all complaints/ inquiries shall be forwarded whether by email, paper copy or phone call to the Enforcement Services Department for input into the Customer Services Management System (CSMS) as per Appendix A. City staff shall complete the preliminary review section of the *Application for Encroachment* form and send it via email or internal mail for input into the CSMS system. Similarly external complaints/ inquiries shall be entered directly into CSMS along with the preliminary review section of the *Application for Encroachment* form for circulation and if required, to the applicable City Department.

The Enforcement Services Department and/ or the applicable City Department(s) shall complete a preliminary investigation report to validate the situation and determine what course of action, if any, should take place. A possible encroachment shall be identified as not applicable, unauthorized as no City approval granted which shall require removal, or authorized as an Encroachment Permit or Encroachment Agreement is currently in effect or required, under the By-law.

**a) Removal of Existing Encroachments:**

An unauthorized encroachment, when applicable shall be reviewed by the affected City Department to determine whether the encroachment should be removed or warrants an application for an Encroachment Permit or Encroachment Agreement using *Appendix B* as a guide. In either case, the enforcement shall be the responsibility of the Enforcement Services Department to issue the notice upon its own initiative and/ or upon the request of the Department in control of the affected lands and as per the requirements of the "Encroachment By-Law". The non-compliance notice/ letter shall be either delivered or sent by registered mail to the owner describing any of the above requirements. Notice will be served to the owner to ensure interruption of continuous possession.

Where an encroachment is not authorized to continue, upon written notification from the City it is incumbent upon the owner to cease the encroachment forthwith and remove all encroachments within a thirty (30) day time period at the owner's expense. It shall be the responsibility of the affected City Department working with the Enforcement Services Department to remove, fill in or close up the encroachment and restore the public lands to their former conditions. The costs of enforcement, including any other expenses, shall be borne by the Department in control of the affected lands and recovered from the owner as provided in section 14 of the Encroachment By-law.

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Where a request for removal of an encroachment is not complied with within the stipulated period of time the following options may be considered:

- i. Where the encroachment consists of objects/ structures etc. that can easily be moved, City staff may remove the objects/ structures and store/ discard them at the expense of the owner and without compensation.
- ii. Where the encroachment consists of trees or other vegetation, City staff may remove the trees or vegetation and discard them or relocate them elsewhere on City-owned property at the expense of the owner and without compensation.
- iii. In all other cases the concerned Department shall request the Legal Services Department to commence legal proceedings to regain possession of the land and the Legal Services Department may commence an action against the owner.

In the case of a dispute with an owner where the affected City Department cannot resolve the matter or when any other need arises, the Real Estate Committee shall meet to resolve the concern. Alternatively, if a resolution still cannot be achieved with the owner, the Encroachment Committee may impose mandatory mediation before going to court. All costs to be paid by the owner if the mediator rules against the owner.

**b) Authorization of Existing or New Encroachments:**

In very limited cases an owner may continue encroaching onto Public Lands for a specified length of time with written approval from the City, which may take the form of an Encroachment Permit in the case of a simple encroachment or an Encroachment Agreement in the case of a complex encroachment using *Appendix B* as a guide. In special cases and where established Departmental criteria are met, the Encroachment Committee may also recommend to Council the sale of Public Lands, if it deemed in the interest of the City and then only upon the approval of Council.

Administration of encroachments is the responsibility of the Real Estate Division, Legal Services Department for Encroachment Agreements relating to complex encroachments. Whereas, Special Projects, Licensing & Permits Division, Clerk's Department is responsible for Encroachment Permits relating to simple encroachments. In the administration of an encroachment all affected City Departments and/ or external agencies will be consulted for their input.

The Clerk's Department and the Real Estate Division of the Legal Services Department shall maintain a directory of all authorized Encroachment Permits and Encroachment Agreements. Copies of the Encroachment Permits and Encroachment Agreements shall be sent to the Building Standards Property files to support compliance requests from lawyers, to the Enforcement Services Department to support their investigation of future encroachments as either authorized or not authorized and to the affected City Department.

In the case of non-payment of any expenses, the value of the expenses shall be recovered from the owner as provided for in section 14 of the Encroachment By-law.

**i) Encroachment Permits for Simple Encroachments - License of Occupation**

An Encroachment Permit is a simple encroachment, which at the sole discretion of the City shall specify the general responsibilities of the owner and the City including any insurance and maintenance requirements. The term of the Encroachment Permit shall be for the life of the encroachment, or until the sale of the owner's property, or until application is made for development of the owner's property, or until the encroachment is required for municipal purposes. The owner shall be required to pay a non-refundable application permit fee as prescribed within our "Fees and Charges By-law" 396-2002 as amended from time to time including any additional expenses.

A license is different from a lease in that it is a limited permit exclusive and personal to an individual for the use of or entry to land. It denotes a shared occupation, does not run with the land and is non-registerable and non-assignable. On short notice the City can terminate the granted permission.

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Licenses are usually used in situations where it will not be possible to remove illegal encroachments without undue hardship. Such an arrangement stresses that the encroachment is not permanent and that the City intends to ultimately use the lands.

Some municipalities prefer licenses because leases are more binding and perceived as more permanent.

Licenses may also be granted for a term, (i.e. five years, renewable upon re-evaluation, etc). Normally they are valued at rates similar to those of leases taking into consideration the use permitted, fencing provisions and duration. However, due to the municipality's ability to retrieve the lands on short notice, licenses may be given for nominal amounts plus a one time administrative cost.

In Vaughan, residents requesting rear open space who wish to fence in the area are expected to object and have in the past to a license because of the non-permanent nature, they appear to be generally unprepared to incur additional costs such as fencing. The meaning of a lease verses a license is easier to understand, and therefore generally preferred by the residents.

This alternative can be used to legalize existing encroachments or to grant "gardening plots" where appropriate or to permit use for a short interim period until a park is developed.

**ii) Encroachment Agreement for Complex Encroachments - Leases**

An Encroachment Agreement is a complex encroachment, which at the sole discretion of the City, may be registered on title, shall specify all responsibilities of the owner and the City including insurance and maintenance requirements. The agreement shall take the form of a lease or the encroachment when required may be authorized by City by-law alone. The term of the Encroachment Agreement shall be determined by the City and will be for: a specified duration of time, or for the life of the encroachment, or until the sale of the owner's property, or until application is made for development of the owner's property, or until the encroachment area is required for municipal purposes.

The owner shall be required to pay a non-refundable application agreement fee as prescribed within our "Fees and Charges By-law" 396-2002 as amended from time to time. The owner shall also be required to pay an administration fee and current market rent for the lands subject to the encroachment as well as all other expenses. Current market rent shall be ten percent of current market value of the land subject to encroachment for the first year of the agreement, increased by three percent per annum for each subsequent year of the term of the agreement. Current market value shall be based on the highest and best use of the owner's property.

Leases may be granted for any period of time and for any amount. Most municipalities use both *long-term* and *short-term* leases depending on the circumstances of an existing encroachment. The City has entered into a few long-term leases respecting open space lands.

Granting a lease results in the land coming under the jurisdiction of the *Tenant Protection Act, 1997* and therefore requires a monitoring system. However, it is difficult to enforce any conditions regarding use of lands. In addition, the tenant is liable for insurance, taxes and rent. Usually, the documents are registered on title in the Registry Office. Potential problems associated with *long-term* leases are summarized as follows:

- i. Long-term lease may imply that the lands are surplus to our needs that may be of concern where such lands have been originally conveyed to the City for environmental, engineering reasons, parkland or woodlands.
- ii. Residents tend to perceive leases as permanent grants of rights in the lands and therefore proceed to bring in fill and to construct retaining walls. It is extremely difficult for the City to enforce provisions, as most areas are fenced. Enforcement may cause an additional administrative load.
- iii. Long-term leases, especially those over 50 years are almost equal to an easement sale when considering valuation of the land. The City land may be of benefit to the abutting owner by

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increasing the value of their existing lot as the lease usually runs with the land. It is appropriate to charge a higher amount for such leases.

- iv. Long-term leases on parkland or open space water management areas may encourage new encroachment requests.

Staff can support long-term leases in certain circumstances, i.e. where the City may benefit by reducing maintenance costs for landscaping purposes, or for other reasons. Specific covenants such as prohibiting the cutting of trees or the changing of a garden can be recommended depending on the specific situation. Any failure to abide by the covenants would result in the City taking possession. A long-term lease need not be assignable upon sale of the abutting land to ensure the City has an opportunity to review compliance with its policies and conditions.

In a situation where numerous residents on a street are requesting land to be added to their rear yard, the Parks Department has suggested using a *short-term* lease i.e. 10 years with a cancellation clause to allow for flexibility of future City needs or planning. The problems associated with *short-term* leases are summarized as follows:

- i. If the lease is terminated, the fencing would have to be relocated and residents may be reluctant to absorb the cost.
- ii. If a lease is cancelled, or not renewed at the end of the ten years, the City will be on the defensive to provide reasons for their decision. Residents may expect immediate development of such area by way of landscaping, or planting of trees to offset any negative perception.
- iii. A lease even for only 10 years implies the land is not needed and is therefore, surplus, and sets some level of permanency to the encroachment.

Staff can support charging a higher fee for assignable long-term leases of over 20 years. Short-term leases could be either a one-time administrative charge, plus costs, taxes and insurance, or a yearly rent.

Yearly rent for land is usually calculated on the basis of the per sq. m. rate x 10% rental x the area.

However because these leases would have restrictive covenants regarding grading, etc it would be more appropriate to charge less, (i.e. 50% of rental, or an annual fee to cover costs). Where leases are granted for landscaping purposes only, or are on a ravine or open space area, most municipalities charge a nominal amount plus costs and a one-time administration fee.

**iii) Sale of Land – in special cases**

Sale always implies that the lands are surplus to municipal needs. At draft plan of subdivision approval stage one of the primary areas of negotiations is establishing the top of bank in order to create a rear lot line which is to be a realistic boundary between open space/ woodlands and residential or adjacent land use/ zoning. The purpose of this boundary is to establish a safe setback from the valley or hazard lands and to ensure that the valley slopes or fringe areas are not destabilized by uses such as retaining walls, gardens and sheds.

Open space lands or woodlands have been conveyed to the City for nominal consideration for environmental and engineering reasons or to enhance the City's parkland holdings. Where environmental reasons such as the preservation of natural wildlife habitats and environmentally sensitive areas are applicable, sale should be prohibited as per provincial statute or regulation.

If these lands are routinely sold the perception will be given that the City is not committed to preserving its open space lands. This has a negative effect on negotiations to acquire future holdings. These factors must be carefully considered so as not to increase the reluctance of developers to settle for reasonable top of bank lines.

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In general, staff supports the existing sale policy that prohibits sale of land below the top of bank. Sale should not ever be considered as a standard policy. However, if the circumstances are in any way unusual or if it is of benefit to the City to sell, i.e. side yards/ unused walkways or road allowances, it may be considered as an appropriate mechanism to resolve an encroachment problem.

In fact, all municipalities have provisions that allow for sale of land for existing encroachments. Criteria used to support such a decision can be as follows:

- i. To straighten boundary line;
- ii. Where it is demonstrated conclusively for reasons of security, safety, environmental, conservational and recreational integrity, and the cost of maintenance, that the lands should not remain as parkland or if it is of benefit to the City to sell them, the lands may be disposed of. The saleable area is therefore considered to be surplus, meaning not necessary to fulfil the City's operational mandate;

An analysis of Parks and Engineering/ Public Works objectives and the nature and history of the encroachment should be undertaken by the Real Estate Committee. Where the Real Estate Committee is prepared to recommend a sale of land at market value or the value in contribution to the abutting site, a report to Council will be prepared under the direction of the City Solicitor.

**DEPARTMENTAL/ OTHER COMMENTS:**

This section provides an updated historical overview of comments related to Encroachment concerns, which have been incorporated into the Summary section and the Encroachment By-law. This section shall also provide a reference point to review, evaluate and apply the appropriate conditions to an *Application for Encroachment* from a Department's perspective.

**a) Parks Department Comments**

**In principle, and consistent with the Parks and Recreation Master Plan, the Parks Department do not recommend with any permits, lease or sales of any parks, open space lands or woodlands owned by the City.** In their opinion, the sale of such lands shall erode the inventory of parks, open spaces or woodlands and the Master Plan recommends that such lands not be sold.

However, where the Parks Department receives an Application for Encroachment Form for either a permit or lease or where Council in certain circumstances approves the sale of such lands, the Parks Department recommends the following conditions:

- i. That the subject lands not be sold, but that instead the owner enters into a lease with the City.
- ii. That for long-term leases or sales the owner place a black chain link fence to include the land being leased, and for short-term, a post and wire farm fence (with finished wood posts every 2.4 metres, delineating the area being leased. For short-term leases, that the existing property line fence be retained and the City permit a maximum 3.0 metres opening, or gate, to the leased area whereas with a long-term leases the old fence can be removed.
- iii. That the maximum land to be leased be three 3.0 metres from the property line.
- iv. That the City of Vaughan Engineering Department review any such request and comment on any impact on the storm water management requirements.
- v. That the lease for short term be for no more than five (5) years, and that the City retain the right to terminate the lease with reasonable notice.
- vi. That woodlands not be sold and should be exempted from short-term and long-term leases and permits.

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<b>Department:</b>	<b>DEVELOPMENT ENGINEERING</b>
<b>Subject:</b>	<b>ENCROACHMENT POLICY</b>

**b) Engineering & Public Works Departments Comments**

## i) Open Spaces/ Parklands/ Woodlands/ Storm Water Management

Most open space areas are designed for overland flow routing and/ or storage of floodwaters. There are also areas that are identified as having potential for slope failure through erosion or instability.

For most overland flow routes any grading or additional filling would create disruption of flows and/ or reduction in storage areas. Therefore when these areas are sold or leased, there is a likelihood of filling which can disrupt the original engineering design.

In summary, the biggest concern relates to the use of the land and change in grading that could affect the flow/ storage of water. The width of area and degree of slope, or its stability, have a bearing on the Department's comments.

## ii) Road Allowances or Sewer, Water and Road Easements

**The Engineering & Public Works Departments do not support any permits, leases or sales of any road allowances or easements owned by the City except in the case of sale where it can be demonstrated that the road allowance or easement is no longer needed to support or improve City's infrastructure.**

In certain locations, permanent existing encroachments, such as signs as per by-law 178-2003 and 203-92 as amended, fences or landscaping improvements can be tolerated within the road allowances or easements but it should be discouraged for the following reasons:

- i. Public Safety – Encroachments on public lands can be a safety hazard to the public, i.e. overgrown landscaping/ vegetation or fencing blocking the sight triangle on corner lots.
- ii. Restoration Costs – Encroachment increases costs to the taxpayer for the restoration of public lands, i.e. underground sprinklers, unauthorized filling and obstruction of roadside drainage ditches, pool drains or rain water leaders with holes in curb, driveway curbing, driveway light posts, pillars, ornaments, illegal driveways in the sight triangle or garden/ storage shed/ building materials within easements.
- iii. Insurance Claims – Encroachment may give rise to serious liability claims resulting from accidents within the road allowance, i.e. large boulders in boulevard, flooding resulting from unauthorized filling/ culvert alteration or landscaping alteration such as replacing sod with river stone rocks in the boulevard resulting in the discharge of the river stone rocks towards homes, cars or people during snow removal activities.

The Department shall not actively seek to identify encroachments but shall deal with them on a case-by-case basis. Where the Department anticipates work within the City's road allowances or easements the Departments shall attempt to advise owners to remove all encroachments within a specified time prior to the commencement of work as per the City's Encroachment By-law. The Department shall not repair, replace or compensate any owner for their failure to remove any encroachments within the specified time as owners encroached onto the road allowance or easement at their own risk. The Department shall only repair or replace as per the City's current criteria; owners who take it upon themselves to install speciality items like pattern concrete driveways or other unique landscaping features do so at their own risk and the City cannot be held responsible for failure to restore or replace it to the owner's satisfaction.

However, where the Departments receives an Application for Encroachment Form for either a permit or lease or where the Real Estate Committee is considering a recommendation to City Council for the sale of such Public Land, the Departments recommend the following conditions:

*Encroachment of City Roads or Sewer, Water and Road Easements*

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- i. *That the subject lands not be sold.*
- ii. *That where existing structures encroach upon a City road allowance or easement, the Commissioner of Engineering and Public Works or his/ her designate be authorized, if appropriate, to work with the Legal Department to issue Encroachment Permits for simple encroachments or Encroachment Agreements for complex encroachments for said structures. The said Encroachment Permits or Encroachment Agreements to be issued only on the following conditions:*
  - a) **CLEAR ACCESS.** *That the encroachment, in the opinion of the Commissioner of Engineering and Public Work or his/ her designate, does not adversely affect or impede the public use of the road allowance, in the case of an easement, our ability to service/ replace our infrastructure or create any safety concerns;*
  - b) **SURVEY.** *That the applicant supplies the City with an Ontario Land Surveyor (OLS) approved reference plan showing the accurate dimensions of the encroachment, when required;*
  - c) **EXPENSES.** *That the applicant be responsible for all costs associated with the encroachment including but not limited to removal, fees, registration and legal costs if required;*
  - d) **INSURANCE.** *That the City is held harmless from any liability or claims for damages resulting from the encroachment in the appropriate form and of a specified amount of liability insurance policy, with the City named as an "Additional Named Insured" therein;*
  - e) **WHO.** *That the permission to encroach be granted only to the current owner or purchaser of the adjacent private property;*
  - f) **TERM.** *That the "Encroachment Permit" be for the life of the encroachment with the right to terminate the "Encroachment Permit" with minimal notice and the "Encroachment Agreement" be for no more than five (5) years with the City's right to terminate the "Encroachment Agreement" with minimal notice;*
  - g) **FEE.** *That a fee be attached to the Application for Encroachment Form to cover the Departments' costs; &*
  - h) **EXTENSION.** *No further extension and/ or additional encroachment rights granted.*
- iii. *That where a structure encroaches upon a City road allowance or easement, and the said road allowance or easement, in the opinion of the Commissioner of Engineering or Public Works or his/ her designate, does not adversely affect or impede the City, the City may release that portion of the road allowance or easement affected by the encroachment subject to the following conditions:*
  - a) **PROOF.** *That the applicant prove to the City that the road allowance or easement is no longer needed to maintain or improve the City's infrastructure;*
  - b) **EXPENSES.** *That the applicant be responsible for all costs associated with the release including but not limited to legal, survey and registration;*
  - c) **APPROVAL.** *That such sale of the road allowance or release of easement rights be approved by City Council; &*
  - d) **FEE.** *That a fee be attached to Application for Encroachment Form to cover the Departments' costs;*

**c) T.R.C.A. Comments**

Toronto and Regional Conservation Authority (T.R.C.A.) has the authority to ensure that the land use conforms to Ontario Regulation 158 made under the Conservation Authority Act. This means that there can be no structures in a flood plain area, or filling within the regulated area.

In general, Authority Staff do not support the permit, lease or sale of publicly owned hazard lands as the intent of public acquisition of valley lands is to protect such lands against unwise use which could affect the land's ability to perform its natural functions from the flooding and erosion perspective. Their

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experience has shown that allowing such lands to be permitted, leased or sold results in additional unwanted encroachment and enforcement difficulties.

Should the City decide to permit, lease or sell such lands, then the following conditions are suggested by T.R.C.A.:

- i. If high/ dry and beyond 10metres setback from the top of bank, T.R.C.A. has no concerns.
- ii. Lease contain provisions to ensure that there is compliance with the fill regulations within the Regulated area and no structures be permitted in the flood plain areas.
- iii. Fencing needs to be appropriate for the area.
- iv. The fee per acre for the flood plain should be reviewed with TRCA so as not to jeopardize TRCA current base market value. TRCA is aware that most municipalities typically charge more than this current base market value.
- v. An agreement is registered on title of the property having the effect of prohibiting the removal of vegetation, alteration to grades, or placement of any buildings or structures (including fencing) within such lands. This would be a tripartite agreement between the owner/ lease, City of Vaughan and the T.R.C.A.

**SUMMARY**

In general, the City must retain its obligation to preserving Public Lands and easements by establishing an encroachment by-law to safeguard environmental, operation and engineering concerns. Due to the reality of the situation the policy/ by-law must also provide a mechanism for dealing with existing and requests for encroachments.

The City of Vaughan affirms its commitment to preserving Public Lands and easements and to this end adopts the following Encroachment Policy as a companion to facilitate the administration of the Encroachment By-law:

**a) Communication Strategy**

The City adopts an information package to be posted on the City's web site, which may take the form of a brochure or other communications from time to time such as the City page within the local community newspapers to inform and educate private owners and staff about encroachments onto Public Lands. The brochure may be included with water billing distributed from time to time and to new Vaughan residents.

**b) Illegal/ existing Encroachments**

- i) It is general policy that illegal encroachments on Public Lands be removed immediately.
- ii) The City of Vaughan will not actively take steps to identify illegal encroachments, however where such encroachments are identified through observations by operational staff in the performance of their duties or through inquiries/ complaints, this Policy along with the Encroachment By-law shall apply to such encroachment and the private property owner(s) encroaching shall be notified and shall be required to comply with this Policy/ By-law.
- iii) In the event that a property owner refuses to either remove an encroachment or enter into an agreement (e.g. permit/ license or lease) as provided for in this Policy/ By-law, that staff are authorized to take appropriate legal action to have the encroachment removed.
- iv) In restrictive cases where the Real Estate Committee is prepared to recommend the sale of Public Land, an analysis examining the history, nature and extent of the encroachment together with the long and short term Departmental objectives should be undertaken to provide City Council with the recommended disposition of the matter especially in cases where there is a strong potential for an adverse possession claim.

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- v) Where structures are involved, and/ or it is impossible to remove the encroachment without considerable expense and disruption, in this case a "complex encroachment"; consideration may be given to permitting the encroachment to remain for as long as the abutting landowner owns the land and agrees to enter into an Encroachment Agreement. Such permission will terminate upon the sale of the abutting lands and will be subject to appropriate conditions. A request by a subsequent landowner to maintain the encroachment shall be considered in the context of this Policy/ By-law.
- vi) Encroachments which are generally minor in nature, in this case "simple encroachment" but which are not so serious as to require removal or where removal can cause undue hardship, permission to maintain the encroachment may be given subject to the abutting landowner agreeing to enter into an Encroachment Permit with the appropriate conditions and paying the applicable application fee & expenses.
- vii) Current market values rental rates where appropriate, plus all other expenses, shall apply to all permits/ licenses, leases or sales. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the Encroachment Permit or Encroachment Agreement, which may also include such matters as a survey, insurance, protective covenants and restriction on use.

**c) Request for Encroachments**

- i) The public does not view the encroachment as a restrictive use of public land and/ or an impediment to the enjoyment of the land.
- ii) Where a request to encroach or to purchase land is received and it is demonstrated that for reasons of security, safety, environmental, conservational and recreational integrity, planning and engineering objectives or prohibitive cost of maintenance that it is beneficial to the City, the Public Lands shall be either permitted or leased and in special cases recommended for sale by the Encroachment Committee to provide City Council with the recommended disposition of the matter.
- iii) Current market values rental rates where appropriate, plus all other expenses, shall apply to all permits/ licenses, leases or sales. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the Encroachment Permit or Encroachment Agreement, which may also include such matters as a survey, insurance, protective covenants and restriction on use.
- iv) That Open Space lands, not including Parklands or Woodlands should not be sold to residential owners to enable them to extend their lots except in compliance with the following conditions:
  - i. The lands should not be below top of bank.
  - ii. The lands should be sold at the market value for parklands zoned Open Space.
  - iii. The City/ owner should erect a 1.5m black vinyl chain link fence along the new property line.
  - iv. Lands should be sold only if rear lots lines would be continuous to avoid gap-toothed appearance.
  - v. There is a strong potential for an adverse possession claim.
  - vi. The purchaser should pay all expenses including but not limited to surveys and fences.
- v) For storm water management, flood plain or ponding lands which have been dedicated to the municipality at no cost specifically for storm water management purposes, the following policy:
  - i. That the City not sell any lands within storm water management areas below the finalized top of bank as identified by the Engineering Department

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in consultation with the Toronto Region Conservation Authority.

- ii. That any lands between the abutting resident's lot line and the finalized top of bank with a minimum 5m offset may be sold at nominal cost provided that all survey, legal, conveyance, and, if required, fencing costs or fencing relocation costs be paid by the abutting residents; and further that, where practical, all the residents abutting the particular storm water management areas must participate.
  - iii. That commencing immediately all subdivisions be lotted back to a realistic and "finalized" top of bank line; that fences be installed on the rear lot lines; and that any unauthorized filling beyond the top of bank for the purpose of extending backyards into storm water management areas be deemed to be encroachments and removed at the owner's expense.
- vi) That the City not sell, lease or permit any parklands, woodlands, road allowances or easements that have been purchased or dedicated under the Planning Act. The general implication of no sale, lease or permit would be:
- i. Owners would not obtain any private use of Public Lands.
  - ii. The boundary line between the private owner and the non-active parkland should be properly fenced, if not already done so under the subdivision agreement, then at the municipality's expenses; and all encroachments, if any, removed.
  - iii. City maintenance responsibility would continue.
  - iv. Full public access.
  - iv. The stability of any slopes or preservation of environmental areas beyond the residents lot line would remain with the municipality.

**ATTACHMENTS:**

City of Vaughan Encroachment By-Law  
Application For Encroachment

**CONTACT:**

*For General information about the Encroachment By-law, please contact*  
Access Vaughan

*To report encroachments in City Parks or Woodlands or Open Spaces, please contact:*  
Parks Operations & Forestry Division, Parks Department

*To report encroachments within the road allowances or easements, please contact:*  
Road Maintenance Services Division, Public Works Department

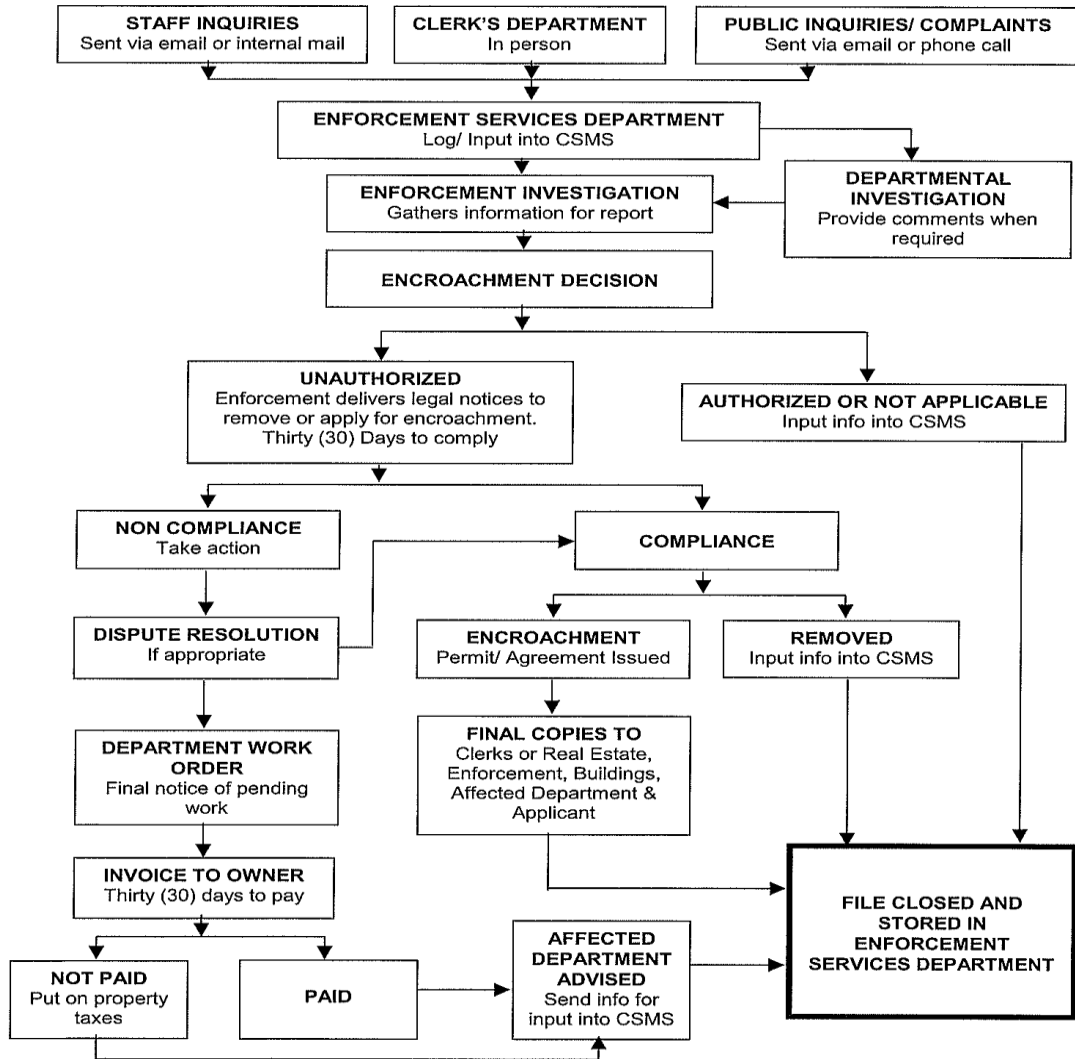
Application for Encroachment Permit for simple encroachments, please contact:  
Special Projects, Licensing & Permits Division, Clerk's Department

*Application for Encroachment Agreement for complex encroachments, please contact:*  
Real Estate Division, Legal Services Department

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**APPENDIX A**
***Preliminary Encroachment Investigation Flow Chart:***


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**APPENDIX B**

**Encroachments Examples Not Allowed**

- Fencing
- Large Boulders
- Driveway Curbing
- Garden Composters
- Pillars or Ornaments
- Replacing Sod with River Run Rock
- Illegal Driveways in the Sight Triangle
- Unauthorized paved or unpaved pathways
- Underground Sprinklers (irrigation systems)
- Unauthorized Culvert/ Piping or Grading or Filling
- Driveway Light Posts & Associated Electrical Works
- Vehicles parked on public land offered for retail sale
- Pool Drains or Rain Water Leaders With Holes in Curb
- Garden Plots in existing Developed Parks or Woodlands
- Garden Shed or Building Materials (wood, bricks, blocks, etc.)
- Trailers, campers, boats or recreational structures: (volleyball or basketball nets), etc.
- Decks, Stairs, Railings, Patios, Insect Zappers, Pools, Hot tubs, Deck Footings, etc.
- Play Structures including sand boxes, gyms, playhouses, swings, slides and tree houses

**Pre-existing Encroachment Examples**

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Simple Encroachment

Vegetation  
Garden Plot  
Fence of Open Construction

Complex Encroachment

Inground Pool  
Retaining Wall  
Permanent Deck  
Permanent Garden Sheds

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**ENCROACHMENT BYLAW**  
**COMMUNICATIONS STRATEGY FOR ENCROACHMENT BYLAW**

**OBJECTIVES**

1. Inform target audience of the City's new encroachment bylaw.
2. To promote Council's commitment to community safety and environmental stewardship through media coverage, City Page notice, and website posting

**TARGET AUDIENCES**

**External**

Residents  
Business/Development  
Ratepayers Associations/Property Owners  
Media  
Other levels of government

**Internal**

All staff

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**ACTION STEPS**

<b>ACTIVITY</b>	<b>RESOURCE</b>	<b>DUE DATE</b>
<b>Design website and Vibe page for “Encroachment bylaw,” to include:</b> <ul style="list-style-type: none"> <li>• Splash page navigation</li> <li>• Section navigation</li> <li>• Copy / Description</li> <li>• Design elements – illustrations and photos</li> </ul>	Engineering Corp. Comm. ITS	
<b>Possible additional features:</b> <ul style="list-style-type: none"> <li>• Website links to related sites</li> <li>• Brochure for possible mailers and distribution from City buildings               <ul style="list-style-type: none"> <li>- 80,000 colour copies @ \$5,500</li> <li>- 80,000 b/w copies @ \$4,000</li> <li>- \$87 per thousand for delivery by Canada Post</li> </ul> </li> </ul>	TBD	
<b>Launch activities:</b> <ul style="list-style-type: none"> <li>• Memo to Council and SMT</li> <li>• Notice to staff through VIBE</li> </ul>	Engineering Corp. Comm.	

**PERFORMANCE MEASUREMENT**

Track website visits. Monitor telephone calls. Observe media react

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**ENCROACHMENT BYLAW**  
**COMMUNICATIONS STRATEGY FOR ENCROACHMENT BYLAW**

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All staff

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