

# *THE CITY OF VAUGHAN*

# *BY-LAW*

## **BY-LAW NUMBER 034-2017**

**A By-law of the Corporation of the City of Vaughan regulating Encroachments on Public Lands, to repeal By-law Number 054-2016.**

**WHEREAS** the Municipal Act, 2001, S.O. 2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at section 11(3) 1; Culture, parks, recreation and heritage at section 11(3) 5; and Structures, including fences and signs at section 11(3) 7 and any other provisions relating to the City owned property, whether land or buildings:

**AND WHEREAS** section 8(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

**AND WHEREAS** section 391(c) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property, including property under its control;

**AND WHEREAS** section 446(1) of the Municipal Act, 2001 provides that a municipality, in default of a person doing things that he or she is required to do under by-law, may do such things at the person’s expense;

**AND WHEREAS** section 446(2) of the Municipal Act provides that for purposes of section 446(1) the municipality may enter upon land at any reasonable time;

**AND WHEREAS** section 446(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing things under section 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**AND WHEREAS** it is the wish of the Council of The Corporation of the City of Vaughan to pass a by-law that reflects the needs of its communities by promoting through regulation the responsible use of the public boulevard, while protecting the broader public interest by ensuring the safety and accessibility of its property, including property under its control;

**NOW THEREFORE** the Council of The Corporation of the City of Vaughan ENACTS AS FOLLOWS:

**SHORT TITLE**

1. This By-law shall be known and may be cited as the “Encroachment By-law.”

**DEFINITIONS**

2. In this By-law,
  - a) “Aerial Encroachment” means any projection of an object, other than a tree or other planting, that is located on *Private Property* and projects at least 30 centimetres above the surface of *Public Lands* (as measured from the highest point of the object that projects over *Public Lands*);
  - b) “Alter” means a change in grading form or substance from its original state;
  - c) “Boulevard” means that part of a *Highway* that is not used, or intended to be used, for vehicular travel by the general public, and is situated between the travelled portion of the road and the adjoining property line, including the 0.3 metre reserve, where applicable;
  - d) “City” means the Corporation of the City of Vaughan, in the Regional Municipality of York;
  - e) “City Infrastructure” means any *City* asset, whether located below, on, or above grade;
  - f) “Complex Encroachment” includes any *Aerial Encroachment*, *Sub-surface Encroachment*, and any other *Encroachment* that the City deems to be a major *Encroachment* including, but is not limited to, below-grade hydro installations, heated driveways, and *Encroachments* related to commercial *Private Property*;
  - g) “Director” means the *City’s* Director of By-law & Compliance, Licensing & Permit Services and shall include his or her designate;

- h) "Emergency" means any condition, matter or thing that poses an immediate danger to the health or safety of any *Person*;
- i) "Easement" 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;
- j) "Encroachment" means any type of landscaping or vegetation, natural or man-made object or item of *Personal Property*, that is located wholly on *Public Lands* that are adjacent to *Private Property*, or is located at least partially on *Private Property* and extends onto *Public Lands*, and includes *Complex Encroachments*, *Simple Encroachments* and *Unauthorized Encroachments*;
- k) "Encroachment Agreement" means an agreement that was executed under authority of By-law Number 244-2005 between the *City* and an *Owner*, granting the *Owner* authority to erect, place, *Alter* or continue an *Encroachment*;
- l) "Encroachment Permit" means a licence (permit) issued by the *City* to an *Owner*, granting the *Owner* authority to erect, place, *Alter* or continue a *Complex Encroachment* under By-law 054-2016 or this By-law;
- m) "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;
- n) "Fence" means a barrier or any structure, except a structural part of a building, that wholly or partly screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining land, and includes any shrubbery or other plantings that have the same effect;

- o) "Highway" means a common and public highway, any part of which is intended for or used by the general public for the passage of vehicles and pedestrians and includes the area between the property lines thereof.;
- p) "Municipal Law Enforcement Officer" means an individual 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;
- q) "Notice" means any notice required to be given by the *City* to the *Owner* with respect to this By-law, such *Notice* shall either delivered or sent by prepaid registered mail to the *Owner's* address, as provided to the Clerk's Department. A *Notice* includes an order issued under sections 444 and 445 of the Municipal Act, 2001, as amended. In the event such *Notice* is mailed, it is deemed delivered on the third business day after mailing;
- r) "Owner" means the registered owner of the *Private Property*;
- s) "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*;
- t) "Personal Property" means any object or item of property other than real property, that is owned by a *Person*;
- u) "Private Property" means a parcel of real property, as it is described in the records of the land registry office, that is owned by a *Person*, and includes all buildings and structures thereon;

- v) "Public Boulevard Appurtenance" means any *City* asset located above grade on the *Boulevard* and includes, but is not limited to, fire hydrants, hydro boxes, street lamps, street furniture, and *City* trees or other plantings;
- w) "Public Lands" means lands owned by the *City*, and shall include but not be limited to the *Boulevard*, any *Highway*, lane, alley, square, place, viaduct or trestle, water, 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;
- x) "Region" means the Corporation of the Regional Municipality of York;
- y) "Sight Triangle" means the portion of a corner lot within a triangular space formed by sightline and sight distance requirements, as set out in the City of Vaughan's/Region of York's Standard Drawings/Criteria, and measured along each street's Right-of-Way from the point where such street lines intersect.
- z) "Simple Encroachment" means any *Encroachment* onto a *Boulevard* that is allowed without the need for an *Encroachment Permit*;
- aa) "Street" means that part of a highway used or intended to be used for vehicular travel by the general public.
- bb) "Sub-surface Encroachment" means any *Encroachment*, or part thereof, that extends more than 20 centimetres below grade;
- cc) "Temporary Permit" means a Road Occupancy Permit or other *City* permit to manage the activities on or adjacent to *Public Lands*;
- dd) "Unauthorized Encroachment" means any *Encroachment* not authorized by this By-law.

## PROHIBITIONS AND RESTRICTIONS ON ENCROACHMENTS

3. Whether deliberately or inadvertently, no *Person* shall erect, place, *Alter* or continue, or cause to be erected, placed or continued, an *Encroachment* of any kind on *Public Lands*, or *Easement* in favour of the *City*, except as permitted by this By-law.
4. *Simple Encroachments*, subject to the conditions and requirements of this By-law are permitted as of right.
5. *Complex Encroachments*, subject to the conditions and requirements of this By-law, are only permitted under the authority of an *Encroachment Permit*.
6. No *Person* shall erect, place, *Alter* or continue a *Simple Encroachment* or a *Complex Encroachment* if it:
  - (a) is located on or extends onto any *Public Lands* other than the *Boulevard*;
  - (b) creates an unsafe condition or a hazard;
  - (c) interferes with regular *City* operations;
  - (d) modifies or interferes with *City Infrastructure*;
  - (e) is not maintained in a state of good repair; or
  - (f) contravenes this or any other *City* or *Region* by-laws.
7. Notwithstanding any other sections in this By-law, this By-law does not apply to the following:
  - a) Signs, as authorised through By-law Number 178-2003, known as the “Public Property Sign By-law” and By-law Number 203-92, as amended, known as the “Sign By-law”, or their successor by-laws;
  - b) Collectible Waste, as defined and provided for through Waste Collection By-law No. 217-2010, as amended, or its successor by-law;
  - c) Waste, as defined and provided for through Littering and Dumping By-law No. 3-2004, as amended, or its successor by-law;

- d) Maintenance and occupancy of property, as authorised through By-law Number 231-2011, known as the “Property Standards By-law”, or its successor by-law;
  - e) Newspaper boxes, as authorised through By-law Number 372-2004, as amended, known as the Newspaper Box By-law”, or its successor by-law;
  - f) Mailboxes belonging to the Canada Post Corporation or any of its agents;
  - g) Properties that 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;
  - h) A temporary *Encroachment* arising from construction, maintenance or other activity as authorised under a valid *Temporary Permit* issued by the *City*;
  - i) An *Encroachment* permitted as a result of a written and signed agreement with the *City*, other than an *Encroachment Permit* or an *Encroachment Agreement*;
  - j) An *Encroachment* arising as a result of a Committee of Adjustment decision permitting the *Owner* of residential *Private Property* to widen his or her driveway, providing a Curb cut Application/Permit from the *City* is also issued to the owner; and
  - k) An *Encroachment* arising from surface changes made in connection with residential driveways, provided such *Encroachments* have not been constructed within the *Sight Triangle* and do not breach any other municipal by-law or regulation.
8. Without limiting Section 6, *Simple Encroachments* and *Complex Encroachments* may only extend above grade if they are located:
- a) more than 30 centimetres from a sidewalk; and
  - b) more than 100 centimetres from the street curb.
9. No *Simple Encroachment* or *Complex Encroachment* shall extend above grade more than 30 centimetres, as measured at the curb, within a *Sight Triangle*.

10. No *Simple Encroachment* or *Complex Encroachment* shall be erected, placed or *Altered*, or continued:
- a) within 100 centimetres of any *Public Boulevard Appurtenance*;
  - b) within 200 centimetres of any fire hydrant, if it extends above grade more than 30 centimetres; and
  - c) within 300 centimetres of the access side of an outdoor transformer installation.
11. No *Fence* that encroaches onto the *Boulevard* shall:
- a) exceed a height of 1.2 metres for that portion of the *Fence* erected in a residential front yard, unless such yard abuts a rear yard, in which case the encroaching *Fence* may not exceed 1.8 metres;
  - b) exceed a height of 1.8 metres for that portion of the *Fence* located along a residential side yard or rear yard;
  - c) exceed a height of 3.0 metres in a non-residential zone;
  - d) otherwise contravene the height restriction in Fence By-law No. 80-90, as amended, or its successor by-law; or
  - e) enclose any *Public Boulevard Appurtenance*.
12. Every *Fence* that encroaches onto the *Boulevard* shall meet the construction and maintenance standards prescribed in Fence By-law No. 80-90, as amended, or its successor by-law, including all requirements for a pool fence, where applicable.
13. Any tree or other planting located on *Private Property* that has branches or foliage that extend onto a *Sight Triangle* shall have such branches or foliage trimmed back to the property line to a height of at least 1.8 metres above grade, as measured at the curb.

#### **APPLICATION FOR ENCROACHMENT PERMIT**

14. Any *Owner* requesting an *Encroachment Permit* shall:



- a) submit a completed application, as prescribed by the *Director*;
  - b) pay the prescribed fee, as per Fees and Charges By-law No. 171-2013, as amended, or its successor by-law; and
  - c) upon receiving *Notice* that the request has been approved, execute the permit and pay any applicable *Expenses* within thirty (30) days of being notified.
15. Where a request by an *Owner* to erect, place, *Alter*, or continue a *Complex Encroachment* has been approved and the *Owner* has received *Notice* and where the *Owner* has not executed the *Encroachment Permit* or paid the applicable *Expenses* within 30 days of being notified, the *Owner* shall be deemed to have abandoned his application and forfeited any fees paid.
16. Where there is an existing *Encroachment Agreement* or *Encroachment Permit* at the time this By-law comes into force, such *Encroachment Agreement* or *Encroachment Permit* shall be allowed to continue under the provisions of this By-law.

#### **LIABILITY**

17. The provisions of this By-law shall not be construed as relieving or limiting the responsibility or liability of any *Person* who has lawfully or unlawfully erected, placed, *Altered* or continued an *Encroachment* from any personal injury, including injury resulting in death or property damage resulting from such *Encroachment*, or from acts or omissions of such *Person*, or his or her agents, employees or contractors, in the erection, placement, alteration, continuation or removal of the *Encroachment*. Likewise, provisions of this By-law shall not be construed as acceptance by the *City*, its officers, employees, or agents of any responsibility or liability whatsoever by reason of allowing an *Encroachment*, approving the request for an *Encroachment Agreement*, or removing an *Unauthorized Encroachment*.
18. The *City* is not responsible for any damages, losses or injuries caused by or to an *Encroachment*. For further clarity, the *City* is not responsible for any damages caused to an *Encroachment* as a

result of the *City's* operations, including, but not limited to, ploughing, grass cutting, *Boulevard* tree maintenance, or the repair and maintenance of the *City's* infrastructure.

## **INDEMNIFICATION**

19. The holder of an *Encroachment Agreement* or *Encroachment Permit* shall be jointly and severally responsible to indemnify the *City*, its officers, employees, and agents from all losses, damages, costs, expenses, claims, demands, actions, lawsuits, or other proceedings of every nature and kind arising from, and in consequence of, the erection, placement, *Alteration*, continuation or removal of an *Unauthorized Encroachment*.

20. An *Owner* who holds an *Encroachment Agreement* or an *Encroachment Permit* shall:

- a) if he or she is a residential *Owner*, file annually with the *City* a certificate of general liability insurance for the property to which the *Encroachment* relates, that is satisfactory to the *Director*; or
- b) if he or she is a commercial *Owner*, file annually with the *City* a certificate of general liability insurance for the property to which the *Encroachment* relates and showing the *City* as an additional insured, that is satisfactory to the *Director*.

## **REGISTRATION**

21. Where the *Director* deems it appropriate, an *Encroachment Permit* may be registered against title to the applicant's property with the land registry office and all expenses in doing so shall be paid in advance by the *Owner* applying for the permit.

## **AUTHORITY OF DIRECTOR**

22. The *Director* shall have delegated authority to:

- a) Revise fees and charges dealing with *Encroachments* under Fees and Charges By-law No. 171-2013, as amended, or its successor by-law;
- b) Approve or reject any application submitted for an *Encroachment Permit*;

- c) Revoke an *Encroachment Permit* or *Encroachment Agreement* that has been issued as a result of false or misleading statements, or undertakings, in the application, or that has been issued in error;
- d) Impose terms and conditions on any application for an *Encroachment Permit* as deemed appropriate under this By-law;
- e) Determine whether any *Encroachment Agreement* or *Encroachment Permit* expiring on a date after the date of enactment and passage of this By-law shall be renewed, extended, or amended; and
- f) Impose mandatory mediation before taking an *Person* to court.

#### **NO VESTED RIGHT**

23. Nothing in this By-law, including the execution of an *Encroachment Permit* or *Encroachment Agreement*, creates a vested right in the *Owner* or in the occupant of the *Private Property* to which an *Encroachment* is appurtenant, or in any other *Person*, and thus any *Encroachment* may be revoked in accordance with the provisions of this By-law or the conditions of an *Encroachment Permit* or *Encroachment Agreement* issued under this or a previous By-law. There shall be no adverse possession of the *Public Lands* on which the *Encroachment* is located.

#### **DISCONTINUANCE OF AN ENCROACHMENT**

24. If an *Owner* intends to permanently discontinue an *Encroachment*, he or she shall notify the *Director* in writing and the *Director* shall thereafter have a *Notice* sent to the *Owner* advising of the *Owner's* obligation to remove the *Encroachment* and restore the *Public Lands* to their former condition at the *Owner's* expense.

25. If the *Director* is of the opinion that a breach of the terms and conditions of an *Encroachment Permit* or an *Encroachment Agreement* has occurred, or that the term of said *Permit* or *Agreement* has expired, and that the *Encroachment* should be discontinued, the *Director* may

have a *Notice* sent to the *Owner* advising of his or her obligation to remove the *Encroachment* and restore the *Public Lands* to their former condition at the *Owner's* expense.

26. Where the *Owner* fails to comply with a *Notice* issued under section 24 or 25, the *Encroachment* may be removed by the *City* and the *Public Lands* restored to their former condition at the expense of the *Owner*, and such *Expense* to be recovered in the manner provided in sections 34 and 35 below and until the subject *Encroachment* is removed, any *Expenses* incurred by the *City* with respect to the *Encroachment* shall continue to be paid by the *Owner*.

#### **CITY WORK AND EMERGENCY SITUATIONS**

27. Where in the course of performing maintenance, repairs or any other public works, the *Director* deems it appropriate to remove an *Encroachment*, the *Director* shall:

- a) in the case of a *Complex Encroachment*, for which there is a valid *Encroachment Permit* or *Encroachment Agreement*, provide a *Notice* advising of the work to be conducted and the approximate starting date for that work;
- b) in the case of any other *Encroachment*, remove said *Encroachment* to the extent necessary to conduct the *City* work;
- c) upon completion of the *City* work, be responsible only for returning the *Public Lands* back to their condition prior to the *Encroachment*.

28. Notwithstanding sub-section 27 a), if the *Director* deems an *Emergency* to exist or could exist, the *Director* may cause, without *Notice*, any action required to abate the emergency, including but not limited to removing any *Encroachment*, and in such case the *City* shall be responsible only for returning the *Public Lands* to a standard acceptable to the *City*.

#### **FAILING TO MAINTAIN AN ENCROACHMENT**

29. Where the *Owner* fails to maintain an *Encroachment* in accordance with the provisions of this By-law or an *Encroachment Permit* or *Encroachment Agreement*, the *Director* may send a *Notice*

to the *Owner* advising him or her of the deficiency resulting in non-compliance and of the period of time provided to the *Owner* to bring the *Encroachment* into compliance.

30. Where the *Owner* fails to bring an *Encroachment* into compliance in accordance with the *Notice* issued under section 29, the *City*, may on behalf of the *Owner*, remove of the *Encroachment* and bring the *Public Lands* to a standard acceptable to the *City*, at the *Owner's* expense and such *Expense* is to be recovered in full in the manner provided in sections 34 and 35 below.

#### **REMOVAL OF UNAUTHORIZED ENCROACHMENTS**

31. Where the *City* becomes aware of an *Unauthorized Encroachment*, the *City* may give *Notice* to the *Owner* of the *Private Property* to which the *Unauthorized Encroachment* is appurtenant to remove the *Encroachment* and restore the *Public Lands* to their former condition at his or her expense.
32. Where an *Owner* does not comply with a *Notice* given to him or her under section 31, the *City* may undertake to remove the *Encroachment* and bring the lands back to their former condition at the *Owner's* expense and such *Expense* to be recovered in full in the manner provided in sections 34 and 35.
33. Any material or structure forming part of or attached to the *Encroachment* removed by the *City* under section 32 may, at the discretion of the *Director*, be relocated onto *Public Lands*, without compensation to the *Owner* or may be deposited at the *Owner's Private Property* or be stored for 30 days at the *Owner's* expense, and such *Expense* to be recovered in full in a manner provided in sections 34 and 35. Any items stored and not claimed by the *Owner* within the said 30-day period shall be disposed of by the *City* in such manner as it deems appropriate and without any compensation to the *Owner*.

## **RECOVERY OF EXPENSES**

34. All *Expenses* incurred by the *City* in connection with the enforcement of this by-law shall be paid within 30 days of their billing date, and in the event of failure to pay the entire amount due within the said 30 days, at the discretion of the *City*, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the *Expenses* were billed.
35. Notwithstanding section 34, the *City* may recover all *Expenses* owing under the enforcement of this By-law by a court action as a debt due to the *City*.

## **INFRACTIONS AND PENALTIES**

36. Every *Person* who contravenes this By-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of *Expenses*, as provided for in the Provincial Offences Act of Ontario, R.S.O. 1990, c. P.33, as amended.

## **OWNER'S RESPONSIBILITY**

37. The *Owner* is deemed to be responsible for any and all *Encroachments* located on his or her *Private Property* and will be held responsible for any violations of this By-law as they relate to his or her *Private Property*.

## **PROHIBITION ORDER**

38. Where a *Person* is convicted of an offence under this By-law,
- a) the Superior Court of Justice, or
  - b) any other court of competent jurisdiction,
- may, in addition to any other penalties imposed on the *Person* convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the *Person* convicted.

## **ENFORCEMENT**

39. A *Municipal Law Enforcement Officer*, employee, or agent of the *City* acting under this By-law may enter and inspect all lands, buildings, structures or parts thereof that are subject to this By-law at any reasonable time with or without *Notice* at the discretion of the *City* for the purposes of determining whether there is compliance with this By-law.

## **GENERAL**

40. In this By-law, unless the context otherwise requires, wording imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

## **RIGHT OF ACCESS**

41. No *Person* shall obstruct, hinder or interfere with the free access to any *Encroachment* by a *Municipal Law Enforcement Officer*, employee, or agent of the *City*.

## **TRANSITION**

42. Any *Encroachment Agreement* or *Encroachment Permit* valid and binding at the date of enactment of this By-law shall not require further authorization pursuant to this By-law until the *Encroachment Agreement* or *Encroachment Permit* expires or is otherwise terminated.

43. Subject to section 42, this By-law shall apply to all *Encroachments* that existed or were created before this By-law was enacted and passed.

## **SEVERABILITY**

44. Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of City Council in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

### **CONFLICT WITH OTHER BY-LAWS**

45. Where there is a conflict or contradiction between this By-law and any other by-law of the *City*, the provisions establishing the higher standard shall prevail.

### **REPEAL OF OTHER BY-LAWS**

46. Encroachment By-law No. 054-2016 is hereby repealed.

### **FORCE AND EFFECT**

47. This By-law shall come into force and effect on the date it is enacted.

Enacted by City of Vaughan Council this 19<sup>th</sup> day of April, 2017.

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Hon. Maurizio Bevilacqua, Mayor

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Barbara A. McEwan, City Clerk