

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER 244-2005

A By-law of the Corporation of the City of Vaughan regulating encroachments on public lands, to amend By-law Number 134-95 and to rescind By-law Number 358-86.

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 sphere of jurisdiction: Highways, including parking and traffic on highways at section 11(1) 1; Culture, parks, recreation and heritage at section 11(1) 5 and Structures, including fences and signs at section 11(1) 7;

WHEREAS section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act, 2001;

WHEREAS section 9(1) of the Municipal Act, 2001 provides that section 8 and 11 shall be interpreted broadly so 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;

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;

WHEREAS section 427(1) of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person's expense, which that person is otherwise required to do under a by-law or otherwise has failed to do;

AND WHEREAS section 427(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

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) "Alter" means a change in grading form or substance from its original state;
 - b) "City" means the Corporation of the City of Vaughan, in the Regional Municipality of York;
 - c) "City Solicitor" means the head of the City's Legal Services Department and shall include his or her designate;
 - d) "Commissioner" means the City's Commissioner of Legal & Administrative Services and shall include his or her designate;
 - e) "Complex Encroachment" means a major encroachment as determined by the City;
 - f) "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 license;

- g) "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);
- h) "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*;
- i) "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*;
- j) "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;
- k) "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;
- l) "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;
- m) "Owner" means the registered owner of a parcel of property as such person is described in the records of the land registry office;
- n) "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*;
- o) "Personal property" means any object or item of property other than real property;
- p) "Premises" means a parcel of real property under registered ownership and includes all buildings and structures thereon;
- q) "Public Lands" means lands owned by the *City*, and shall include but not be limited to any public highway, road allowance, street, avenue, parkway, lane, alley, square, place, viaduct or 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;
- r) "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*;
- s) "Sight Triangle" means the area of *Public Lands* abutting the corner of a lot enclosed by the projection of each property lot line;
- t) "Simple Encroachment" means a minor *Encroachment* as determined by the *City*;
- u) "Temporary Permit" means a Road Occupancy Permit or other *City* permit to manage the activities on or adjacent to *Public Lands*;
- v) "Unauthorized Encroachment" means any encroachment not authorized by this by-law.

ENCROACHMENTS PROHIBITED

3. a) 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. See Schedule "A" for Typical Encroachment Areas.
- b) 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. See Schedule "A" for Typical Encroachment Areas.
- c) Notwithstanding subsection 3(a) or 3(b), the provisions of this 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";
 - 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;

APPLICATION FOR ENCROACHMENT

4. a) Any person requesting authorization to erect, place, *Alter* or continue an *Encroachment* on *Public Lands* or *Easements* shall be required to submit an application to the *City* seeking permission to do so, along with payment of the non-refundable application fee as per the *City's "Fees and Charges By-law"* 396-2002, as amended.
- b) The form and content of the application(s) shall be as prescribed by the *Commissioner* from time to time, and a copy may be obtained from the Clerk's Department.
- c) Where an application to erect, install, *Alter* or continue a *Simple Encroachment* has been approved, the Clerk's Department shall advise the owner in writing that an *Encroachment Permit* must be executed. The applicant shall have thirty (30) calendar days to execute it and pay any applicable *Expenses*.
- d) Where an application to erect, install, *Alter* or continue a *Complex Encroachment* has been approved, the Clerk's Department shall advise the owner in writing that an *Encroachment Agreement* must be executed. The *City Solicitor* shall prepare an *Encroachment Agreement*, and once the applicant has been notified in writing that the *Encroachment Agreement* is ready for execution, the applicant shall have thirty (30) calendar days to execute it and pay any applicable *Expenses*.
- e) Where an applicant fails to pay the applicable *Expenses* or fails to execute an *Encroachment Permit* or *Encroachment Agreement*, within the thirty (30) calendar days as prescribed in subsection 4(c) or 4(d), the applicant shall be deemed to have abandoned his application.

LIABILITY

5. The provisions of this by-law shall not be construed as relieving or limiting the responsibility or liability of any owner who is granted an *Encroachment Permit* or *Encroachment Agreement* onto *Public Lands* from any personal injury including injury resulting in death, or property damage resulting from such encroachment or from acts or omissions of such owner, or his/ her agents, servants, employees, contractors in the erection, placement, alteration, continuation or removal of any encroachment. Likewise, provisions of this by-law shall not be construed as imposing on the City, its officers, employees, servants, and agents any responsibility or liability whatsoever by reason of the approval of or issuance of either an *Encroachment Permit* or *Encroachment Agreement* or for the removal of any *Unauthorized Encroachment*.

INDEMNIFICATION

6. a) The applicant and/ or holder of an *Encroachment Permit* or *Encroachment Agreement* shall be jointly and severally responsible to indemnify the City, its officers, employees, servants and agents, from all losses, damages, costs, expenses, claims, demands, actions, suites, or other proceedings of every nature and kind arising from and in consequence of the erection, placement, continuation, alteration or removal of the *Unauthorized Encroachment*.
- b) The *Owner* shall file an annual certificate of its public liability insurance policy, in a form and the terms of which are satisfactory to the City, showing the City as an additional named insured.

REGISTRATION OF AGREEMENT

7. Where the *Commissioner* deems it appropriate, an *Encroachment Agreement* may be registered against title to the applicant's property with the land registry office and all expenses in doing so shall be paid for in advance by the applicant.

AUTHORITY OF COMMISSIONER

8. The *Commissioner* shall have delegated authority to:
 - a) Revise fees and charges dealing with Encroachments under the City's "*Fees and Charges By-law*" 396-2002, as amended from time to time as deemed appropriate; and
 - b) Approve or reject any application submitted for an *Encroachment Permit* or *Encroachment Agreement*; and
 - c) Revoke any *Encroachment Permit* or *Encroachment Agreement* that has been issued as a result of false or misleading statements, or undertakings, in the application, or has been issued in error; and
 - d) Impose such terms and conditions to any application and/ or *Encroachment Permit* or *Encroachment Agreement* as deemed appropriate; and
 - e) Determine whether any *Encroachment Agreement* expiring on a date after the date of enactment and passage of this by-law shall be renewed and/ or extended; and
 - f) Impose mandatory mediation before taking an owner to court, as the *Commissioner* may deem appropriate.

REVOCATION

9. The execution of an *Encroachment Permit* or *Encroachment Agreement* in respect of an *Encroachment* does not create any vested right in the owner or occupant of the premises to which the *Encroachment* is appurtenant, or in any other *Person*, and the *Encroachment Permit* or *Encroachment Agreement* may be revoked in accordance with the terms set out therein.

ACCESS TO ENCROACHMENT

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

DISCONTINUANCE OF ENCROACHMENT

11. a) If the owner of any premises to which an *Encroachment* is appurtenant desires to permanently discontinue the *Encroachment*, he/ she shall notify the *Commissioner* in writing and the *Commissioner* shall thereafter cause a notice to be sent to the owner advising that the *Encroachment* shall be removed or filled in and closed up, and the *Public Lands* shall be restored to their former conditions by the *Owner* at his/ her own expense.
- b) If the *Commissioner* is at any time of the opinion that a breach of the terms and conditions attached to an *Encroachment Permit* or *Encroachment Agreement* has

occurred and that the *Encroachment* should be discontinued, or where an *Encroachment Permit* or *Encroachment Agreement* has expired, the *Commissioner* may cause a notice to be sent to the owner advising that the *Encroachment* be removed or filled in and closed up, and the *Public Lands* be restored to their former condition by the *Owner* at his/her own expense.

- c) Where an *Owner* fails to comply with the *Notice* described in subsection 11(a) and/ or 11(b) within thirty (30) days of receipt of same, the *Encroachment* may be removed or filled in and closed up by the *City*, and the *Public Lands* restored to their former condition at the expense of the *Owner*, such *Expense* to be recovered in full in the manner provided in section 14 below, and until the *Encroachment* is so removed or filled in and closed up and the *Public Lands* restored to their former condition, all *Expenses* incurred by the *City* in respect thereto shall continue to be paid by the *Owner*.

EMERGENCY SITUATIONS

- 12. a) If the *Commissioner* deems that an emergency exists or may exist as a result of any *Encroachment* being or about to become a source of danger to the health and safety of the public, the *Commissioner* may,
 - i) notify in writing the *Owner* of the *Premises* to which the *Encroachment* is appurtenant, require the repair, removal, filling in or closing up of the *Encroachment* and restoration of the *Public Lands* to their former condition at the *Expense* of the *Owner*, so that the *Encroachment* is no longer deemed to be a source of danger or potential danger to the public by the *Commissioner*, and/ or
 - ii) take such measures on behalf of the *Owner*, without notice to the *Owner*, as the *Commissioner* may deem necessary to remove the danger or potential danger created by the *Encroachment*.
- b) Where the *Notice* described in subsection 12(a)(i) is not complied with within the time period stipulated therein, the *City* may repair, remove, fill in or close up the *Encroachment* and restore the *Public Lands* to their former condition, at the *Expense* of the *Owner*, such *Expense* to be recovered in full in the manner provide in section 14 below.
- c) Where the *Commissioner* elects to take any action under subsection 12(a)(ii), the *Expense* incurred by the *City* in so doing shall be recovered in full in the manner provided in section 14 below.

REMOVAL OF UNAUTHORIZED ENCROACHMENTS

- 13. a) Where the *City* becomes aware of an *Unauthorized Encroachment*, the *City* may give notice in writing to the *Owner* of the *Premises* to which an *Unauthorized Encroachment* is appurtenant, to forthwith remove, fill in or close up the *Encroachment* and to restore the *Public Lands* to their former condition at the *Expense* of the *Owner*.
- b) Where the *Notice* in subsection 13(a) is not complied with within thirty (30) days of the date of the *Notice*, the *City* may, on behalf of the *Owner*, remove, fill in or close up the *Unauthorized Encroachment* and restore the *Public Lands* to their former condition at the *Expense* of the *Owner*, such *Expense* to be recovered in full in the manner provided in section 14 below.
- c) Any material or structure forming part of or attached to the *Encroachment* and removed by the *City* may, at the discretion of the *Commissioner*, be relocated onto *Public Lands*, without compensation or deposited at the *Owner's Premises* or be stored for thirty (30) days at the *Owner's Expense*, such *Expense* to be recovered in full in the manner provided in section 14 below. Any item so stored and not claimed by the *Owner* within the said thirty (30) day period shall be disposed of by the *City* in such manner, as it deems appropriate and without compensation.

RECOVERY OF EXPENSES

- 14. a) All *Expenses* incurred by the *City* in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (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.
- b) In the alternative, the *City* may also recover all *Expenses* owing under this by-law by a court action as a debt due to the *City*.

INFRACTIONS AND PENALTIES

- 15. 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, as amended.

PROHIBITION ORDER

16. When a *Person* has been 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 penalty imposed on the *Person* convicted, issue an order prohibiting the continuation or repetition of the offence of the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

ENFORCEMENT

17. A *Municipal Enforcement Officer*, employee, servant 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.

DELEGATION OF AUTHORITY

18. The Commissioner and/ or the City Clerk are authorized to execute and affix the Corporate Seal of the *City* to all Encroachment Agreements and where applicable to all Encroachment Permits.

GENERAL

19. In this by-law, unless the context otherwise requires, words 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.

EXCEPTIONS AND GRANDFATHERING

- 20. a) Any *Encroachment* authorized under an *Encroachment Agreement* determined by the *City Solicitor* to be 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* has expired or is terminated.
- b) Subject to subsection 20(a), this by-law shall apply to all Encroachments that existed or were created before this by-law was enacted and passed.

SEVERABILITY

21. Where a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid, or to be no force and effect, it is the intention of 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

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

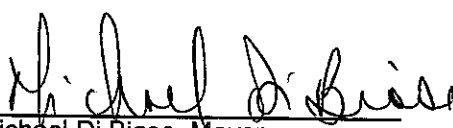
REPEAL/AMENDMENT TO OTHER BY-LAWS


- 23. a) By-Law Number 358-86 is hereby repealed.
- b) By-law Number 134-95 is hereby amended by deleting Section 9 of By-law Number 134-95.

ENACTMENT

24. This By-law shall come into force and effect on the 1st day of July 2005.

READ a FIRST, SECOND and THIRD time and finally passed this 27th day of June, 2005.


Michael Di Biase, Mayor


J. D. Leach, City Clerk

SCHEDULE "A"

