

# Top-of-Bank Encroachment Follow- up

## Recommendation:

That the May 25, 2011, Planning and Development report 2011PCP002 be received for information.

## Report Summary

**This report provides information on top-of-bank encroachment investigations and associated actions and coordination.**

## Previous Council/Committee Action

At the April 6, 2010, Transportation and Public Works Committee meeting, the following motion was passed:

That Administration return to Transportation and Public Works Committee with a report:

- outlining encroachment investigations and any enhanced actions the City may take arising from these investigations (following up from the February 25, 2010, Asset Management and Public Works Department report 2010PW2120)
- providing information on how actions arising from Asset Management and Public Works Department investigations are integrated with Planning and Development Department for development compliance
- providing information on possible bylaw amendments which would allow a change in the fines structure related to public

parkland encroachments, particularly those related to top-of-bank areas

## Report

In June 2009, Administration received a complaint about an encroachment into an undeveloped alley along the top of the bank in the Gold Bar Community. An investigation determined that there were four lots in the area with fencing and other encroachments onto City land. A City team surveyed the properties and documented the encroachments at a cost of approximately \$1,000 (plus drafting costs).

A letter was sent to the owners of the adjacent properties asking that they remove everything that had been placed on City property within a realistic timeline. The letter stated that the City would remove the encroachments if no action was taken by the deadline and could charge the removal costs to the property owner's taxes.

The original deadline for removal was in spring 2010, and all four residents asked for at least one extension. During this period numerous communications were received by the property owners because they felt the encroachments should be grandfathered based on the length of time they had existed.

An inspection was undertaken in early October 2010, and only one of the property owners had removed a small portion of their encroachment. The other three home owners had made no changes. No fines have yet been issued to the property owners for the non-compliance as Administration

continues to work with them to resolve the issues.

In late October 2010, the sites were visited to determine the cost of removing the encroachments and restoring the lands back to their original state. The estimated cost to remove the remaining encroachments is approximately \$10,000 - \$12,000.

In April 2011, the four property owners were issued "orders to comply" under section 545 of the *Municipal Government Act*. The orders indicate that the encroachments must be removed from City lands by June 1, 2011. At that time, an inspection will be carried out to determine compliance with these orders. Should the owners choose not to remove the encroachments, Administration will use existing operating budget to ensure compliance and will pursue the recovery of costs from the owners. An increased budget may need to be proposed to continue with removal of encroachments in other areas in 2012 if these costs cannot be recovered.

Other than complaints, Administration's current involvement in encroachments is through the Compliance Certificate process. Through this process a property owner submits a Real Property Report for review by the City to assess whether the property is compliant with the Zoning Bylaw. Any encroachments identified through this process trigger the requirement for an Encroachment Application or removal of the unauthorized use of public land.

The identification of encroachments is limited to the scope and content of the Real Property Report unless a site visit

is conducted. Site visits to verify site conditions are not typically conducted due to the cost associated with this work. Administration will continue to monitor encroachments through this process.

Encroachments on parkland are not permitted under Unauthorized Use of Parkland Bylaw 12308, without the approval of the City Manager. Encroachments can be allowed under very limited circumstances, including:

- removal of an encroaching structure might compromise bank stability
- the encroachment exists because of undue hardship created by difficult topography
- the encroachment is very minor

Most encroachments do not satisfy these considerations.

Administration is able to control encroachments onto parkland and issue fines under the Unauthorized Use of Parkland Bylaw 12308. The minimum specified fine is \$250 and can be up to a maximum of \$10,000. At the discretion of Administration, the City has the ability to remove unauthorized uses or structures on public lands. Investigations and enforcement action will continue.

Encroachments tend to occur where there are no publicly constructed improvements (roadway or trails) along the top-of-bank. Of the 454 suspected encroachments, 314 (70 percent) are along the top-of-bank. Of these 285 (over 90 percent) are in areas with no formal road or walkway (reference February 22, 2010, Asset Management

and Public Works Department report 2010PW2120).

Moving forward, a top-of-bank walkway or roadway is required in all new plan areas. This should reduce the probability of encroachment issues in new plan areas.

In most other areas of the city, a mix of public education, the Compliance Certificate process, and enforcement of the Unauthorized Use of Parkland Bylaw will be used to address encroachment issues. Wherever possible, Administration will seek cooperation from property owners in achieving compliance. Enforcement can be controversial and is an administratively costly approach. Nevertheless, Administration remains committed to protection of public lands for public use in the way originally planned for the area. Enforcement will continue to be used where necessary.

Depending on the recovery of costs associated with this issue, Administration may seek operational funding to address survey and removal costs in future budgets.

### **Policy**

The City has the ability to control encroachments onto parkland and issue fines under the Unauthorized Use of Parkland Bylaw 12308, or through the use of “orders to comply” issued under section 545 of the *Municipal Government Act* (Enforcement of Municipal Law-Order to Remedy Contraventions section).

### **Corporate Outcomes**

- Improve Edmonton’s Liveability

- Preserve and Sustain Edmonton’s Environment

### **Others Reviewing this Report**

M. Koziol, Acting General Manager,  
Asset Management and Public Works  
Department