

Encroachment fees, other policies proposed for city laneways claimed by homeowners

BY NECO COCKBURN, OTTAWA CITIZEN MARCH 27, 2013

OTTAWA — Homeowners whose backyards have gradually taken over municipal laneways that the city doesn't immediately intend to use could face "nominal" encroachment fees under a proposed policy.

It isn't meant to be "punitive or unnecessarily onerous," city staff say, but would recognize that the yards sit on land that technically belongs to the city.

And if, in a redevelopment, vehicle access from a lane is required under the zoning bylaw "or deemed to represent the appropriate urban design response," the city may, at its discretion, require the removal of encroachments at the owners' expense, says a report to council's transportation committee that sets out proposed encroachment policies for urban lanes.

Staff have been working on laneway policies that would particularly apply to neighbourhoods where residents have added pieces of lanes to their backyards and effectively blocked them off, often because the city stopped using and maintaining the thoroughfares decades ago.

Staff propose overarching policies that aim to provide a consistent approach to how the city deals with the often complex issues involving laneways. The city has 64 kilometres of the rear lanes, and there are places where trees, pools and sheds sit on land technically owned by the municipality.

That has led to problems when underground infrastructure needs repairs or upgrades, when a property owner mid-block wants to park in the back of a home, or when planners want to improve a streetscape by deterring garages at the front of houses.

A project to upgrade sewers and water mains under occupied laneways near Island Park Drive was put on hold while the policy was being developed, in one example. And some Overbrook residents were furious that they stood to lose parts of their backyards when city officials talked a few years ago about taking back laneways to improve the streetscape.

"While it is not the City's intent to create undue and unnecessary hardship, the fact is that there exist portions of City property that are still, legally, public highways for which all residents pay taxes but are being solely and privately enjoyed by abutting landowners," the report states.

"When the City requires those lanes to fulfil any Council-adopted policy direction or for reasons related to infrastructure maintenance, there needs to be clarity about the City's right to do so and the process through which it will do so."

The transportation committee is to discuss the encroachment report on April 3. Council's planning committee, meanwhile, is expected to deal with a companion staff report on management policies for the laneways on April 9.

It remains somewhat complicated. Laneways are classified according to whether they're maintained by the city as well as by the type of access they provide, and encroachments on some types will not be

tolerated at all without permission. The city can also classify and reclassify any lane or approve a reclassification request as it sees fit, the report states.

But for certain types of lanes that have been occupied by abutting owners over the years and where “there are no immediate plans to use them as public highways or gain access to them for the purpose of utility maintenance or repairs,” staff recommended the city charge a fee instead of proactively pursuing removal of the encroachment.

“The applicable encroachment fees, in most cases, would not represent large sums of money; it is therefore not cost-effective for City staff to ‘police’ lane encroachments. As is common practice, the City will respond to requests for investigation,” the report states.

If the encroachment is discovered, the homeowner would also have to pay for a legal survey in order to describe it, the report says.

The proposed annual encroachment fee would apply to those that existed as of Dec. 31, 2012, the report recommends, and no new encroachments would be permitted.

The policy would also set rules for people who want to close a lane and buy the land. Various criteria would have to be met for that to be approved, including an “all or nothing” approach through which all abutting owners would have to agree to buy the land behind their properties.

ncockburn@ottawacitizen.com

twitter.com/NecoCockburn

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