

## **ENC 2022-001 and ENC 2022-002 – Staff comments**

### **BUILDING**

Building does not support the application for an encroachment agreement in principle and if an agreement is entered into no structures shall be erected in the encroached area.

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### **BY-LAW ENFORCEMENT**

The By-law Division has reviewed the request to provide a comment on two requests for encroachment agreements on Sound Street Beach. The two encroachment agreement applications that were submitted by property owners located at 2650 2nd Avenue West & 2620 2nd Avenue West, include firepits, furniture, docks, walkways, watercraft racks, etc.

The area along Sound Street Beach is currently marked and signed by Transport Canada as “no unauthorized access”.

As outlined in accordance to the City’s Encroachment By-law No. 2020-100, staff may provide recommendations and comments regarding the applications submitted.

b. the Encroachment interferes with the City’s intent and purpose in holding Public Lands;

City staff is proposing to enter into an agreement with Transport Canada to have the subject lands converted into a park and be conjoined with the City’s trail system. If the encroachment agreement applications moving forward, this would inhibit the City from converting the area into a park for all residence and visitors to enjoy.

c. the Encroachment creates liabilities for which the City cannot assign full responsibility to the Owner of said Encroachment;

As outlined on the encroachment agreement applications, the applicant has outlined how they intend to use the land. With fire pits, docks, watercrafts, etc. this creates liability to the City. There is potential for reoccurring by-law violations and our office would be required to mitigate the concerns. If granted the encroachment on City property, it would be difficult to determine boundary lines and limits to the encroachment for each applicant. With the area being maintained as an encroachment, members of the public may assume that the subject land is for public use and could lead to further conflict and complaints received for our office to mitigate.

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Currently the subject lands are signed “no unauthorized access”

d. the Encroachment creates a situation that is contrary to any City by-law, City policy or resolution, or any provincial or federal regulation or legislation;

The By-law Division has investigated ongoing encroachment related concerns for the past few years. With each occurrence there have been violations identified and they were required to remove the items. With each occurrence our office has been able to achieve compliance however the offence does reoccur each season. If the encroachment agreement is approved for the private property owners to occupy this land, there is potential for further conflict regarding the use of the land.

e. the Encroachment interferes with work, plans, efforts or initiatives of the City to maintain the Public Lands;

The encroachment agreement applications interfere with the City’s plan to convert the subject lands into a park.

g. the Applicant is unable to reasonably demonstrate a need for the Encroachment.

The applications are unable to demonstrate the need for the encroachment. To occupy the subject lands for the purpose of firepits, furniture, docks, walkways, watercraft racks, etc. it’s unreasonable to have these items stored on City property for the purpose of an encroachment agreement. The residents may have these items on their private properties in accordance to the City’s Regulatory By-laws. Residents are able to visit this area as a park and other residents and visitors may do the same.

The By-law Division recommends that both Encroachment Agreement Applications submitted by private property owners located at 2650 2nd Avenue West & 2620 2nd Avenue West be denied. The By-law Division is in support of a lease between the City and Transport Canada to have the subject lands converted as a park and become part of the City’s trail System for the use of all residents and visitors. With the subject lands being converted into a public park, this area is able to be enforced by the City’s Regulate & Control Parks By-law No. 1992-014, as amended, Encroachment By-law No. 2020-100, Waste Management By-law No. 2005-151, as amended, Traffic By-law No. 2009-075, as amended, Noise By-law No. 2001-034, as amended, and the Open Air Fire By-law No. 2022-051.

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### **ENGINEERING and PUBLIC WORKS**

1. The Public Works and Engineering Department does not support entering into an encroachment agreement of any kind for this property. This is not on the basis of an existing public works need or for future road and municipal servicing but for legal and other reasons noted below. The property is presently owned by Transport Canada and posted as “no unauthorized access”. The City does not have the authority to authorize access. If the City is successful in leasing the property for trail and public access, then it should not be encumbered with an exclusive use or perceived exclusive use agreement.

Therefore, the reasons would be:

- a. the Encroachment interferes with the City’s intent and purpose in holding the Public Lands;
- b. the Encroachment creates liabilities for which the City cannot assign full responsibility to the Owner of said Encroachment;
- c. the Encroachment creates a situation that is contrary to any City by-law, City policy or Council resolution, or any provincial or federal regulation or legislation;
- d. the Encroachment interferes with work, plans, efforts or initiatives of the City to maintain the Public Lands;
- e. the Applicant is unable to reasonably demonstrate a need for the Encroachment.

2. Engineering Services supports the City entering a lease with Transport Canada for the intended public access and use. This also ensures that no permanent or temporary structures are constructed or placed in this hazard shoreline area.

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### **FIRE**

Ceremonial fires on City property have been allowed at Nawash Park, but generally the City does not allow recreational fires on City property. Written permission from the Fire Department will be required for any fires on public lands as well as proof of insurance naming the City as an additional insured.

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## **ENC 2022-001 and ENC 2022-002 – Staff comments**

### **PLANNING**

#### **Background:**

The City Clerk requested that the Planning Division provide comment on two requests for encroachment agreements with no termination dates (6-month removal clause) for amenity facilities and vegetation maintenance on those shoreline lands located on the east side of the municipal road allowance east of 2650 and 2620 2nd Ave W.

The lands subject to the encroachment request are municipally known as the Sound Street Beach. The lands have frontage on 2nd Ave W, and are held partly by the City and by Transport Canada

#### **Comments:**

The subject lands are waterfront/shoreline lands and are designated 'Hazard Lands' in the City Official Plan (2021), and are zoned 'Hazard Lands' (ZH) in the City's Zoning Bylaw (2010-078, as amended).

Section 3.16 of the Official Plan notes that the Hazard Lands designation is intended primarily for the preservation and conservation of lands in their natural state. Lands designated Hazard Lands are lands having qualities that, in combination with their location, present a risk to human safety, potential for property damage, or have physical limitations to development. Hazard Lands within the City include those lands that are susceptible to flooding, wave uprush, erosion or slope instability and in many cases are characterized by steep slopes, organic soils or poor drainage.

Where lands are designated Hazard Lands, the predominant use shall be for preservation and conservation including the following uses:

- Passive and active outdoor recreation uses, including trails for walking, cycling or cross-country skiing provided they can operate without adversely affecting the hazardous conditions of Hazard Lands or be subject to excessive damage due to potential hazardous conditions.

Permitted uses in the Hazard zone are limited to boat launch and dock facility, Public Park and works and facilities in connection with the prevention of erosion, flood control, pedestrian access, protection of vegetation and wildlife.

'Park, Public' means a 'public use' as defined herein and established as a park, playground or playfield which may include therein one or more conservation areas, athletic fields, field houses, arenas, community centers, bleachers, stadiums, swimming or wading pools, beaches, picnic grounds

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and shelters, greenhouses, botanical gardens, children's farms, zoos, bandstands, skating rinks, golf and miniature golf courses, campgrounds, race courses, pavilions, ski courses, ice rinks, tennis courts, bowling greens, marinas, washrooms, curling rinks, refreshment and other concessions accessory thereto, and similar uses.

An appropriate use for the subject lands (Sound Street Beach) are as a Public Park which is part of the City's trail system for use by all residents and visitors.

The encroachment request will establish a private amenity area on public lands. The lands, or portions thereof, provide public waterfront access and facilitate public access to Georgian Bay for recreational activities. If approved, the encroachment request has significant potential to create user conflict of the lands.

The encroachment request is not required to maintain the integrity of the main structure on the applicant's property nor has the applicant reasonably demonstrated a need for the Encroachment.

The encroachment request will:

1. interfere with the City's intent and purpose in holding the Public Lands;
2. create a situation that is contrary to any City by-law, City policy or resolution, or any provincial or federal regulation or legislation; and,
3. will interfere with work, plans, efforts or initiatives of the City to maintain the Public Lands.

### **Recommendation:**

THAT City Council refuse the requests for encroachment agreements with no termination dates (6-month removal clause) for amenity facilities and vegetation maintenance on lands east of 2nd Ave W.

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## **PARKS & OPEN SPACE**

The encroachment applications should both be denied based on the following sections of the Encroachment By-Law (By-law No. 2020-100):

### **Section 15**

The Encroachment interferes with the City's intent and purpose in holding the Public Lands

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With the new lease being taken to council the goal of the lease agreement is to add the entire area from the existing Sound Street Beach south to the Harbourfront Condo's to the City's parks. In adding this area to the parks and trails system allows Public Access to the entire area for various recreational activities.

The Encroachment creates liabilities for which the City cannot assign full responsibility to the Owner of said Encroachment.

Repairs to the existing break wall are proposed to be completed by 2650 2nd Ave West. These repairs should only be completed with the approval of Transport Canada, the Ministry of Natural Resources and Forestry and complying with the federal Fisheries Act and Species at Risk act (NHIC states only Bobolink and Eastern Meadowlark as being threatened in this area and the Yellow-banded Bumblebee as a species of special concern). Liability with any structures, storage of personal property and modifications to the site would need to be deemed acceptable by the City. The use of "fire pits" would also pose liability issues and must adhere to the Open Air Burning By-law (2022-051)

The Encroachment interferes with work, plans, efforts or initiatives of the City to maintain the Public Lands

The Encroachment applications, if approved, would create a landlocked situation. If granted these lands would be observed as part of the Encroachment Agreement Applicants property (by the applicants) creating a landlocked situation which does not follow the proposed inclusion into the City's Parks and Trails network which would designate free use by the public.

The Applicant is unable to reasonably demonstrate a need for the Encroachment

The Encroachment applications state a desire to extend the size of the applicants properties and to have direct access to the beach. The applicants want to use City and Transport Canada land for personal use. Personal firepits, boat storage and yard space is available on the private owners lots while beach access is already provided at the Public Access point of Sound Street Beach.

In addition to these points both applicants have been encroaching on City and Transport Canada lands since before 2020. The installation of firepits, driveways and removal of woody vegetation has all taken place. The

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following is a picture of the encroachment application area for 2650 2nd Ave West captured via aerial photography in 2020.

