



## STAFF REPORT

**Title:** Encroachment Agreement Request EA20-002

**Meeting Date:** July 23, 2020

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### **Executive Summary:**

Request from the owner of 5026 41 Street (Lot 23, Block 33, Plan 782 2950) to enter into an encroachment agreement for a retaining wall encroaching on the City's adjacent lane.

### **Background:**

Administration has received a request from the owner of 5026 41 Street (Lot 23, Block 33, Plan 782 2950) seeking an encroachment agreement with the city. A recently submitted Real Property Report (attached) indicates that the retaining wall encroaches slightly onto the City's lane; however, the extent of the encroachment is minimal.

We understand that the house is for sell of which the owners are in a purchase contract with a buyer who of which will not accept the results of the Real Property Report unless a resolution to the encroachments can be obtained. We also understand that the owners have been threatened for breaching a contract unless a resolution to the encroachments can be obtained. Please note that administration has no details relating to the purchase agreement.

Under the City's Encroachment Policy 104-DA-08, all encroachments that come to the City's attention must be regularized through approval of an encroachment agreement, or, must be removed. Given the small extent of the encroachment, and the fact that the retaining wall is immovable, Administration does not have a concern with entering into an encroachment agreement in this case.

Administration has been advised that the encroachment issue may potentially jeopardize the sale of the property, as there is currently no encroachment agreement in place. Typically, encroachment agreements are terminated upon sale of a property; however, Administration has adjusted the standard encroachment agreement in order to include the following clause to allow the agreement to survive the impending transfer of the property and be assigned to the purchaser:

#### *"21. Assignment*

*Notwithstanding section 10 of this agreement, in the event that the Grantee sells or otherwise transfers the Grantee's Lands to a third party purchaser within sixty*



*(60) days of execution of this agreement, the parties agree that the Grantee's interest in this agreement shall be assigned to the new owner of the Grantee's Lands."*

Administration recommends that Council pass a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five years with an option to renew for an additional five year term.

**Alternatives:**

Council may consider the following alternatives:

- 1) Pass a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five years with an option to renew for an additional five year term.
- 2) Defeat a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five years with an option to renew for an additional five year term.
- 3) Accept as information only.

**Recommended Action:**

Administration recommends that Council pass a motion directing Administration to enter into an encroachment agreement with the owner of Lot 23, Block 33, Plan 782 2950 for a term of five (5) years with an option to renew for an additional five (5) year term.

**Budget Implications (Yes or No):**

No

**Submitted by:**

Kevin Nagoya, Chief Administrative Officer