

September 19, 2009

Power of entry is subject to a number of conditions and permit fees are costly

A *Star* reader recently emailed me to say he was thinking of purchasing a property which is under construction but the seller told him that the neighbour is refusing access to his driveway to complete construction on that side of the house.

This house, like many in Toronto, is built too close to the lot line to allow convenient access for construction purposes without stepping onto the neighbouring property.

The reader wanted to know what his rights were.

Back in 1994, the City of Toronto passed a bylaw allowing the owner or occupant of a building, or his or her employee or agent, to enter onto adjoining land "for the purpose of making repairs, alterations or improvements, to the owner's building" as long as the neighbour's land was left in the same condition that it was in prior to the entry.

All of the former municipalities comprising the amalgamated City of Toronto, except North York, had similar bylaws.

It came as something of a surprise to me to discover that on Oct. 30 last year, Toronto City Council quietly passed a bylaw to repeal the old municipal bylaws and to have a uniform "right of entry" bylaw across the entire city.

The old Toronto bylaw was short and simple. What was a half-page piece of legislation has now mushroomed into a 12-page tome, which turns the simple concept of temporary entry onto a neighbour's property into an enormously complex set of regulations involving permit fees, security deposits, liability insurance, inspections and penalties.

The city's new bylaw 1154-2008 states that an owner or occupant of land may enter adjoining land at any reasonable time for the purpose of making repairs to any building, fence or structure on the land of the owner or occupant, but only to the extent necessary to carry out the repairs or alterations.

The right of entry may only be exercised if the adjoining owner consents (this seems to be fairly obvious), or if the executive director of the city's Municipal Licensing and Standards department has issued a permit for the entry.

The power of entry is subject to a number of conditions (such as the need to display the entry permit), and requires that the permit holder "shall provide compensation for any damages caused by the entry or by anything done on the land."

An application for an entry permit must be on a prescribed form. The applicant for a permit must comply with 18 requirements set out on the form, and has to add the neighbour's name to his or her own liability insurance policy.

The applicant also has to post with the city a \$500 security deposit for "low-impact" work, and a \$2,000 security deposit for "high-impact" work.

Low-impact is defined as work which does not require the construction of any temporary structures such as scaffolding, the use of any heavy equipment, or the excavation or removal of any landscaping.

High-impact work involves one or more of these activities.

After a permit application is filed, the adjoining owner is notified and has 10 business days to "make a submission" to the city "providing details of any circumstances" that should be considered before the permit is issued. The neighbour can also ask the city to "review" the amount of the security deposit.

Detailed provisions are set out for refunding the security deposit if the work is properly completed, or for applying the deposit to pay the neighbour for damages that have been incurred and not remedied.

There is also a section that permits entry onto neighbouring property without a permit in cases of emergency posing an immediate danger to health or safety.

The permit fees are \$230 for low-impact work, and a staggering \$845 for high-impact work, in addition to the security deposit. The fees increase annually with inflation.

The goal of the new bylaw is laudable, especially in a city where many properties are built so closely together, but the complexity and cost of the new regime are staggering. Talk about overkill.

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at Bob.Aaron@toronto.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at <http://www.bob-aaron.com> for articles on this and other topics.

Text of bylaw

Authority: Licensing and Standards Committee Item 16.1

adopted as amended, by City of Toronto Council on October 29 and 30, 2008

Enacted by Council: October 30, 2008 IN FORCE: February 28, 2009

CITY OF TORONTO

BY-LAW No. 1154-2008

To amend City of Toronto Municipal Code Chapter 363, Building Construction and Demolition, to provide a right to enter adjoining land to make repairs and alterations and to repeal the right-of-entry by-laws of the former area municipalities.

WHEREAS all of the former area municipalities except for the former City of North York passed a right of entry by-law under paragraph 64 of section 210 of the *Municipal Act, R.S.O. 1990* or its predecessor; and

WHEREAS the power to pass a right of entry by-law has been revised in section 101 of the *City of Toronto Act, 2006* (the Act); and

WHEREAS under subsection 101(1) of the Act, the City may pass a by-law to authorize the owner or occupant of land to enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the land of the owner

or occupant but only to the extent necessary to carry out the repairs or alterations; and

WHEREAS the power of entry under a by-law passed under subsection 101(1) of the Act is subject to the conditions set out in subsection 101(2), which includes new conditions that were not in paragraph 64 of section 210 of the *Municipal Act, R.S.O. 1990*; and

WHEREAS under subsection 376(1) of the Act, the City may pass by-laws providing that the City may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law passed under the Act, and a direction or order of the City made under the Act or a by-law passed under the Act are being complied with; and

WHEREAS under section 386 of the Act, if the City has authority by by-law or otherwise under an Act to direct or require a person to do a matter or thing, the City may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense, and the City may recover the costs of doing it by action, or the costs may be added to the tax roll and collected in the same manner as property taxes; and

WHEREAS under section 366 of the Act, the City may pass by-laws providing that a person who contravenes a by-law of the City passed under the Act is guilty of an offence, and under section 370 may establish a system of fines for offences; and

WHEREAS under subsections 384(3) and 385(4) of the Act, a by-law under section 366 may also provide that a person who contravenes an order [to discontinue the contravening activity] under subsection 384(1) or a [work] order under subsection 385(1) is guilty of an offence; and

WHEREAS under section 367 of the Act no person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this Act or under a by-law passed under this Act and any person who contravenes this provision is guilty of an offence; and

WHEREAS under sections 7 and 8 of the Act and the specific power in section 259, the City may pass a by-law imposing fees or charges on persons for services and activities provided or done by or on behalf of it; and

WHEREAS notice was given of the proposed fees as required by the Act and public notice was posted on the City's web site; and

WHEREAS section 6 of By-law No. 2930-94 of the former City of York, Being a by-law to adopt a Municipal Code, permits an amendment to be made to a by-law listed in the Concordance of the former City of York's Municipal Code, in which event it shall be added to the corresponding Chapter of the Municipal Code; and

WHEREAS former City of York By-law No. 2757-77, being a by-law To provide for the entry of an owner or occupant of lands upon adjoining lands for the purpose of making repairs, to a building, as amended, is listed in the Concordance as being codified as Chapter 789,

Entry Upon Adjoining Land For Repair;

The Council of the City of Toronto HEREBY ENACTS as follows:

I. Chapter 363, Building Construction and Demolition, of The City of Toronto Municipal Code is amended by adding the following:

ARTICLE V

Right of Entry

363-22. Definitions.

A. As used in this article, the following terms shall have the meanings indicated:

ALTERATION Includes, for example, but is not limited to, a structural change to the exterior or interior of an existing building, fence or other structure, but does not include a total replacement of an existing building fence or other structure.

APPLICANT The owner or occupant of a building or property who applies for a permit, or any person authorized by the owner or occupant to apply for a permit on the owner's or occupant's behalf.

BUILDING The same meaning as in section 1 of the *Building Code Act, 1992*.

[This meaning is noted as follows for reference purposes only:

(1) A structure occupying an area greater than ten square metres consisting of a wall,

roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto;

(2) A structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto;

(3) Plumbing not located in a structure;

(4) A sewage system; or

(5) Structures designated in the building code.]

BUSINESS DAY A day when City offices are open during its regular hours of business, other than a Saturday or a Sunday or other holiday.

EXECUTIVE DIRECTOR The Executive Director, Municipal Licensing and Standards or his or her designate for the purposes of this article.

HIGH-IMPACT WORK A repair or alteration that requires entry on the adjoining land for the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; or the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving.

LOW-IMPACT WORK A repair or alteration that requires entry on the adjoining land to carry out work that does not include the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; and the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving.

OFFICER A City employee whose duties include the enforcement of this article.

PERMIT A permit issued under this article that authorizes right of entry on adjoining lands for the purposes set out in 363-23A.

PERMIT HOLDER The owner or occupant to whom a permit has been issued.

REPAIR Includes:

(1) Maintenance and upkeep; and

(2) The provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a building, fence or other structure conforms with the standards established in a by-law or Act.

B. As used in this article, the terms OCCUPANT, OWNER, and PROPERTY shall have the same meaning as in subsection 15.1(1) of the *Building Code Act, 1992*. [These meanings are noted as follows for reference purposes only:

(1) **OCCUPANT** Any person or persons over the age of 18 years in possession of the property.

(2) **OWNER** Includes:

(a) The person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and

(b) A lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property.

(3) **PROPERTY** A building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property.]

363-23. Right of entry on consent or by permit.

A. The owner or occupant of land may enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the

land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations:

- (1) If the owner of the adjoining land has given prior consent to this entry; or
- (2) If the Executive Director has issued a permit for this entry and the entry occurs during the period specified in the permit.

B. The power of entry under Subsection A(2) is subject to compliance with the following conditions:

- (1) The power of entry may only be exercised by a permit holder or his or her employees or agents and only if they comply with all of the conditions of the permit and the provisions of this article.
- (2) A person exercising the power of entry must display or, on request, produce proper identification.
- (3) The permit holder shall provide reasonable notice of the proposed entry to the occupant of the adjoining land, as described in 363-24B(10)(d).
- (4) The permit holder, his or her employees or agents, shall not create any hazards or allow any hazards to exist on the adjoining land.
- (5) The permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and shall provide compensation for any damages caused by the entry or by anything done on the adjoining land.
- (6) Without limiting the generality of Subsection B(5), restoring the adjoining land to its original condition includes removing any equipment or materials left on the adjoining land as a result of the entry.

C. The power of entry under Subsection A(2) does not authorize:

- (1) Entry into a building on the adjoining land;
- (2) The use of the adjoining land for any other work or activity other than that described on the permit;
- (3) The storage of materials or equipment, or the parking of vehicles, on the adjoining land; and
- (4) An exemption to any person from complying with other City by-laws.

D. In the case of entry under the consent of the owner of the adjoining land under Subsection A(1), the conditions and limitations in Subsections B and C apply to the power of entry, with necessary modifications, unless the owner granting the consent and the owner or occupant exercising the right of entry agree otherwise.

363-24. Permit application.

A. To obtain a permit, the owner shall file a complete application with the Executive Director on a form prescribed by the Executive Director.

B. An application for a permit must include the following:

- (1) The name, address, and telephone number of all contractors that will carry out the proposed work for which entry is required on the adjoining land;
- (2) The municipal business licence number of every contractor or trade that is required to be licensed by the City;
- (3) The insurance type and number of every contractor or trade that is required to be insured in accordance with municipal or provincial regulations;
- (4) The nature of the proposed work that requires use of the adjoining land and the proposed use of the adjoining land, including what equipment will be used, if and how the adjoining land will be distressed, and whether any nuisances will result from the proposed use of the adjoining land (for example, dust, fumes, noise, or restricted access);
- (5) The proposed attenuating measures to control each of the nuisances identified under Subsection B(4);

(6) An estimate of the time that the proposed work will require use of the adjoining land, as described in Subsection B(4) is expected to take;

(7) The days and times that entry will be required;

(8) The proposed remediation measures required to bring the adjoining land, in so far as is practicable, to its original condition;

(9) An estimate of the time required to do the remediation work described in Subsection B(8) (which estimate will be considered for purposes of enforcement);

(10) A signed form acknowledging the permit holders, obligation to:

(a) Use the adjoining land only to the extent necessary to carry out the work on the adjoining land as outlined in the permit;

(b) Not use the adjoining land for any other purpose, including for the storage of materials or equipment and the parking of vehicles;

(c) Provide a security deposit and agree to its forfeiture if deemed necessary by the Executive Director to comply with the owner's obligations to restore the adjoining land and provide compensation for damages;

(d) Provide at least 24 hours notice in writing to the occupant of the adjoining land before any contractor enters the adjoining land;

(e) Systematically mitigate all nuisances with respect to the use of the adjoining land to the extent practicable;

(f) Restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land to the satisfaction of the Executive Director; and

(g) Without limiting Subsection B(10)(d), to hold the owner of the adjoining land harmless in the event of any damages to people or property as a result of anything done on the adjoining land to the extent allowable by law;

(11) Proof that the owner of the adjoining land has been included as a named insured in the liability insurance of the owner for the period covering the estimated time of the proposed work on the adjoining lands; and

(12) The permit application fee set out in Appendix C, Schedule 15 of Municipal Code Chapter 441, Fees and Charges.

C. The notice required under Subsection B(10)(d) may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

D. The permit application fee is non-refundable.

363-25. Notice to adjoining-land owner.

A. After receiving a completed application, the Executive Director shall notify the owner of the adjoining land in writing that a permit has been requested to enter the adjoining land, and the notice shall provide all of the relevant information, set out in 363-24B, as determined by the Executive Director.

B. The owner of the adjoining land may, within 10 business days of the date specified in the notice, make a submission to the Executive Director to provide details of any circumstances that may be considered by the Executive Director in establishing the conditions of the permit.

C. The Executive Director may extend the submission time under Subsection B for not more than 10 business days.

D. The Executive Director shall provide the owner of the adjoining land with a copy of any permit or renewal of a permit that applies to the adjoining land.

363-26. Permit issuance; renewal; revocation.

A. The security deposit, required under 363-27, shall be submitted before a permit is issued.

B. A permit issued under this article shall indicate the period and times during which the

right of entry may be exercised, and this period shall not commence earlier than five business days from the date of issuance.

C. The permit shall also set out any additional conditions, as determined by the Executive Director that reasonably relate to the right of entry (for example the protection of a particular plant.)

D. The permit holder or owner, if not the permit holder, may apply to the Executive Director for a renewal of the permit before the expiry date of the right of entry under the current permit.

E. A permit-renewal application shall include all the information and other documents required under 363-24B.

F. After a complete permit-renewal application is received, the Executive Director shall notify the owner of the adjoining land in writing that a permit-renewal application has been requested by the applicant.

G. The owner of the adjoining land may, within 10 business days from the date specified in the notice, make a submission to the Executive Director providing details of any circumstances that may be considered by the Executive Director in reviewing the permit-application renewal.

H. If a renewal is granted, it shall deem the existing permit to continue for the period specified in the approval and may provide that the right of entry is subject to any existing conditions or additional conditions as established by the Executive Director.

I. The Executive Director may revoke a permit or deny the renewal of a permit if there is non-compliance with the permit conditions.

J. If a permit is revoked or is not renewed, the permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land, to the satisfaction of the executive Director.

363-27. Security deposit.

A. The security deposit for a permit for low-impact work is \$500.

B. The minimum security deposit for a permit for high-impact work is \$2,000.

C. The Executive Director shall determine the amount of the security deposit required for a permit for high-impact work above the minimum amount set out in Subsection B and shall base this amount on the information in the permit application, the inspection by officers, any submissions by the owner of the adjoining land, and any other information deemed reasonable by the Executive Director for this purpose.

D. If in his or her submission, under 363-25B, the owner of the adjoining land requests a review of the amount of the security deposit established by the Executive Director, the submission shall include a detailed estimate in a form acceptable to the Executive Director.

E. The security deposit amount established by the Executive Director after any review of a submission under 363-25B shall be deemed final.

F. The security deposit for a permit shall be in the form of a certified cheque made out to the City Treasurer.

G. In the case of low impact work, the City may hold the security deposit for no more than 60 days after the completion of the work requiring entry on the adjoining land, the completion of any remediation work on the adjoining land, the expiry of the right of entry under the permit, and the completion of any action by the City, whichever is later, to ensure compliance with the permit holder's obligations under 363-23B(5).

H. Despite Subsection G and to ensure compliance with the permit holder's obligations under 363-23B(5), including unseen damages, in the case of high impact work, the security deposit shall be held for the later of:

(1) One year after the completion of the work requiring entry on the adjoining land and the completion of any remediation work on the adjoining land, whichever is later; and

(2) Sixty days after the completion of any action by the City.

I. If within the period in Subsection G, or after the period in Subsection H the Executive Director determines that the permit holder has not complied with the requirements to restore the land and pay compensation for damages as required under 363-23B(5), the City may provide the owner of the adjoining land with all or part of the security deposit and return any remainder to the permit holder.

J. The owner of the adjoining land and the permit holder may on consent authorize the City to provide the owner of the adjoining land with all or part of the security deposit at a date earlier than that provided under Subsection I.

363-28. Emergency exception.

A. If a building, fence or other structure on the land poses an immediate danger to the health or safety of any person, the owner or occupant of the building, fence or other structure or his or her employee or agent may enter the adjoining land without a permit or prior consent, but only to the extent necessary to terminate the emergency.

B. The owner shall, to the extent possible, notify the occupant of the adjoining land of the emergency and the need to enter the adjoining land before entering the adjoining land.

C. All work necessary to terminate the emergency and that requires entry on the adjoining land shall be carried out as if a permit had been granted under this article and is subject to compliance with the conditions in 363-23B, other than notice, and to any other permit conditions retroactively imposed by the Executive Director.

D. Unless the owner of the adjoining land waives this requirement, the owner undertaking the work on the adjoining land shall apply for a permit retroactively for the work performed to terminate the emergency as well as for any other work that will require entry on the adjoining land.

363-29. Inspection.

A. An officer, other employee, or agent of the City may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

(1) This article;

(2) A condition of a permit issued under this article;

(3) A direction or order of the City made under this article or the *City of Toronto Act, 2006*; or

(4) An order made by a court under section 372 of the *City of Toronto Act, 2006*.

B. A person carrying out an inspection under Subsection A may:

(1) Require the production for inspection of documents or things relevant to the inspection;

(2) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

(3) Require information from any person concerning a matter related to the inspection; and

(4) Alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

363-30. Orders to comply.

A. An officer who finds a contravention of this article may make one or more orders requiring discontinuance of the contravening activity or to do work to correct the contravention under section 384 or 385 of the *City of Toronto Act, 2006*.

B. The order may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

C. If there is evidence that the occupant of the land is not the registered property owner, the notice shall be served on both the registered property owner and the occupant of the land.

D. If the address of the owner is unknown or the City is unable to effect service on the owner or occupant under Section C, a placard stating the terms of the order and placed in a conspicuous place upon land on or near the property shall be deemed to be sufficient notice to the owner.

E. If the delay necessary to give an order under the preceding subsections would result in an immediate danger to the health or safety of any person, the order may be served personally on the person to whom it is directed or by a placard stating the terms of the order and placed in a conspicuous place upon land on or near the property.

363-31. Remedial action.

A. If a person fails to comply with an order to do work to correct a contravention of this article, the Executive Director, or persons acting upon his or her instructions, may enter the lands at any reasonable time for the purposes of doing the things described in the order at the person's expense.

B. If the security deposit is not sufficient to cover the City's costs, under section 386 of the *City of Toronto Act*, the City may recover the costs of doing it by action, or the costs may be added to the tax roll and collected in the same manner as property taxes.

363-32. Offences.

A. Every person who contravenes a provision of this article is guilty of an offence.

B. Every person who fails to comply with a term or condition of a permit under this article is guilty of an offence.

C. Every person who contravenes an order under subsection 384(1) or 385(1) of the *City of Toronto Act, 2006* is guilty of an offence.

D. Any person who does not permit entry by a person under the authority of a permit issued under this article, except in the case of non-compliance with the conditions in 363-23B and C or the permit, is guilty of an offence under section 367 of the *City of Toronto Act, 2006*.

2. Repeal and transition:

A. The following by-laws are repealed:

(1) By-law No. 11-94, being a by-law To permit the entry of persons on the land of another for the purpose of making repairs, of the former Borough of East York;

(2) Municipal Code Chapter 128, Entry on Adjoining Lands, Article I, General Provisions, of the former City of Etobicoke;

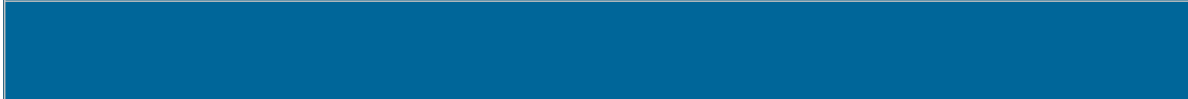
(3) By-law No. 15337, being a by-law to permit the entry of one person on the land of another for the purpose of making repairs as amended, of the former City of Scarborough;

(4) Municipal Code Chapter 146, Building Construction and Demolition, Article III, Right of Entry, of the former City of Toronto;

(5) By-law No. 2757-77, being a by-law To provide for the entry of an owner or occupant of lands upon adjoining lands for the purpose of making repairs, to a building, as amended, of the former City of York, and as codified in former City of York Municipal Code, Property Maintenance, Chapter 789, Entry Upon Adjoining Land For Repair.

B. Despite Subsection A, any investigation, enforcement action or other legal proceeding commenced under or in respect of a by-law listed in Subsection A before the coming into force of this article shall be continued under and in conformity with the respective provisions of the by-law.

3. Schedule 15 of Appendix C of Chapter 441, Fees and Charges, of The City of Toronto Municipal Code is amended by adding the following, in numerical order by row number:



4. Chapter 442, Fees and Charges, Administration of, of The City of Toronto Municipal Code is amended by adding the following:

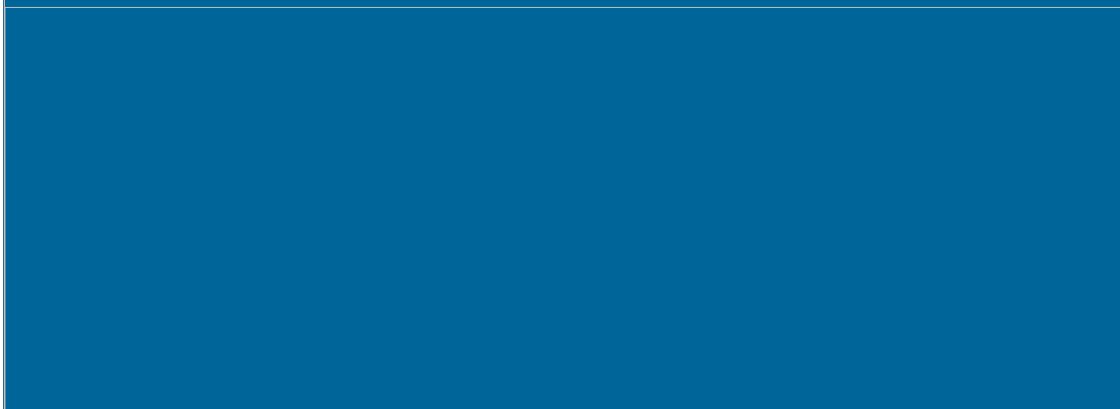
442-14. Right of entry permit annual increase.

The annual adjustment for an application fee for a permit or renewal of a permit under Article V, Right of Entry, of Chapter 363, Building Construction and Demolition, set out in Appendix C, Schedule 15 of Chapter 441 shall be calculated as follows:

A. The fee shall be adjusted annually, on the first day of January, by the percentage increase in wages for that year, as prescribed in the collective agreement with the City's full-time inside workers.

B. When a collective agreement is not in place, the adjustment, as of January 1, shall be based on the increase for the last year for which there was a contract in place.

C. When a collective agreement is ratified, the adjustment for the following year, as of January 1, shall be based on the percentage increase in wages for that year, as prescribed in the collective agreement with the City's full-time inside workers, plus the difference between any collective agreement increases to be applied retroactively and those adjustments actually applied over the same period, as follows:



5. This by-law comes into force on February 28, 2009.

ENACTED AND PASSED this 30th day of October, A.D. 2008.

GLORIA LINDSAY LUBY, ULLI S. WATKISS

Deputy Speaker City Clerk

(Corporate Seal)

