

Councillor's Report: Strengthening Protections Against Construction Encroachment and Enforcing Committee of Adjustment Conditions

**REPORT RECOMMEDATIONS**

1. That committee recommend Council:
  - a. **Direct staff to explore the feasibility of drafting a By-law similar to the City of Toronto's Municipal Code, Chapter 363, Article 8 and report back to the relevant committee/council before the end of Q4 2026 and;**
  - b. **Report back on potential municipal tools (e.g., dust control by-law, security requirements, restoration bonds) that may be implemented within existing legislative authority.**
  
2. That City Council request the Mayor to write the Premier of Ontario to:
  - a. **Request amendments to the *Trespass to Property Act*, R.S.O. 1990, c. T.21, to include provisions that explicitly prohibit unauthorized encroachment onto adjacent private properties during demolition or construction activity, and to further provide for an escalating penalty scale consistent with the maximum penalties currently authorized under the Act. The requested amendments should also include provisions allowing for non-monetary consequences, such as prohibiting the issuance of a building permit to repeat offenders for a defined period of time, as well as enabling the use of Administrative Monetary Penalties (AMPs) as an enforcement tool to address encroachment violations promptly and effectively.**
  
  - b. **Request that the province consider strengthening the enforcement of Committee of Adjustment (COA) conditions by providing municipalities with enhanced mechanisms to ensure compliance with approved variances, including, but not limited to, requirements to include soft landscaping and finishes, including authority to pursue enforcement when developers contravene approved building specifications.**
  
  - c. **That this report and supporting documentation, as adopted by Council, be attached to the Mayor's letter.**

## **BACKGROUND**

Across the City of Ottawa, residents have increasingly reported concerns related to the impacts of infill development, demolitions, and construction projects on neighbouring private properties. In densely populated urban areas like Rideau-Vanier, where lot lines are tight and buildings are often in close proximity, these activities can lead to trespass or encroachment, such as scaffolding being erected on adjacent lawns, excavation damaging tree roots or fencing, or construction workers crossing into neighbouring yards without consent.

Currently, the *Trespass to Property Act*, R.S.O. 1990, c. T.21 provides a legal framework for prohibiting unauthorized entry onto private property; however, it is largely designed for individual trespass and not tailored to modern urban development scenarios. There is no explicit provision in the Act for addressing trespass related to construction or demolition work, leaving property owners to navigate the burdensome civil court system to seek redress. Penalties for violating the *Trespass to Property Act* vary from a notice being issued to a fine up to \$10,000. This gap in provincial legislation limits the ability of municipalities to intervene early and protect residents' rights during development projects.

### **Existing Municipal Guidance - "The Good Neighbours (Infill Construction) Guide"**

The City of Ottawa has proactively developed educational materials to promote responsible infill development practices. The *Good Neighbours Guide* outlines expectations for builders, property owners, and neighbours during construction.

The guide emphasizes:

- The importance of visibly identifying property lines
- Speaking with adjacent neighbours before excavation
- Obtaining consent before entering adjacent lands
- Protecting trees and fencing
- Complying with Committee of Adjustment conditions
- Leaving worksites safe and orderly

The guide also provides a complaint-routing matrix directing residents to 3-1-1, By-law Services, Building Code Services, or provincial ministries depending on the issue.

While this guidance promotes best practices, it is limited in enforcement mechanisms.

A review of municipal practice in the City of Toronto illustrates one approach to filling this regulatory gap at the municipal level. Toronto's Building Construction and Demolition By-law (Municipal Code Chapter 363) contains a dedicated "Right of Entry" section (Article 8) that sets out when an owner (or their agents) may temporarily enter an adjoining property to perform repairs or work that "cannot reasonably be completed from their own land or the street". Chapter

363 establishes key elements that address common neighbourhood harms associated with adjacent construction, including:

- A written notice requirement – at least 24 hours’ notice for non-emergencies;
- Strict limits on the scope of permitted entry;
- An obligation to restore the neighbour(s)’ land and compensate for damage

The by-law was amended in 2024 so that, for non-emergency “right of entry” repairs, a special City permit is not required, but enforcement consequences and remediation powers remain available to the City. These provisions give residents clearer expectations and create an administrative enforcement pathway that sits alongside civil remedies.

At the same time, residents in Rideau-Vanier have expressed frustration with the inconsistent enforcement of conditions attached to minor variances approved by the Committee of Adjustment (COA). For example, developers may receive variances to reduce setback requirements in exchange for planting soft landscaping or positioning windows to protect neighbours’ privacy, only to proceed with construction that ignores these obligations. As the COA is a quasi-judicial body operating at arm’s length from municipalities, City staff often lack the authority to enforce such conditions unless flagged through complaints and compliance inspections via Bylaw and Regulatory Services, which are reactive and limited in scope.

These two issues, construction-related trespass and non-compliance with COA conditions, are rooted in legislative gaps that undermine local planning objectives, resident confidence in municipal processes, and neighbourhood stability. Stronger tools and clearer legislative authority are needed at the municipal level, and this report recommends the City formally request the Province to address these concerns through targeted amendments to existing legislation and enforcement frameworks.

The below chart compares legislative authority and enforcement penalties between Ottawa and Toronto.

<b>Jurisdiction</b>	<b>Legislative Authority</b>	<b>Enforcement Mechanism</b>	<b>Enforcement Penalties</b>	<b>Key Features</b>
City of Ottawa	<i>Trespass to Property Act</i> , R.S.O. 1990, c. T.21	Enforcement is limited to police or private civil action initiated by affected property owners. The City has no direct authority to issue orders, enforce restoration, or recover costs related to	Maximum fine: \$10,000 upon conviction (s. 2(3)).	Enforcement is complaint-driven and reactive.  No provision for immediate orders, restoration, or daily penalties.  Municipal role limited to by-law

		construction encroachment.		enforcement of property standards or building permits.
City of Toronto	<i>Municipal Code Chapter 363 – Building Construction and Demolition, Subsection 8.4-8.6.</i>	Officers may issue orders to comply requiring cessation of contravening activity or corrective work  If unaddressed, the City may authorize remedial action – City staff or contractors can enter the property and complete the work at the offender’s expense.	Every person who contravenes the by-law or fails to comply with an order is guilty of an offence  Fines are set under the <i>City of Toronto Act</i> up to (\$100,000 per offence, with continuing offences up to \$10,000 per day)	Clear enforcement hierarchy – order, notice, remedial entry, cost recovery, prosecution  Immediate authority to act where there is a danger to health or safety  Municipal capacity to enforce compliance directly and recover costs without civil litigation.

**DISCUSSION**

The proposed recommendations respond directly to recurring challenges faced by residents in urban wards such as Rideau-Vanier, where development pressures are most acute. By seeking targeted amendments to the Trespass to Property Act and enhanced enforcement mechanisms for Committee of Adjustment conditions, the City is advancing a proactive approach to protect residents and preserve neighbourhood integrity.

Construction-related trespass is not a minor inconvenience. It can cause lasting damage to private property, compromise safety, and strain relations between neighbours. Currently, the remedies available to residents are reactive, costly, and often beyond the means of those most affected. Strengthening the provincial framework to explicitly address construction encroachment would provide both clarity and deterrence, reducing disputes and giving municipalities the authority to intervene before harm is done.

Similarly, ensuring compliance with COA conditions is essential to maintaining the credibility of the planning system. When developers disregard approved conditions without consequence, the legitimacy of public consultation and variance processes is undermined. Providing municipalities

with stronger enforcement tools will help safeguard community expectations, ensure fair treatment of residents, and promote responsible development practices.

### **Case Studies Illustrating Current Enforcement Gaps**

#### **Case Study 1: Landscaping and COA Enforcement Deficiencies (Carillon Street)**

Residents in Vanier raised concerns regarding newly built and renovated properties that were completed without greenery or adequate finishing. In some cases, owners replaced front yards with loose rocks or left driveways unpaved and uneven. While technically compliant with existing by-laws, these practices diminished neighbourhood character, environmental resilience, and were at odds with COA conditions. Residents further emphasized that there are no clear requirements for soft landscaping or greenery in such developments, and that the enforcement of finishing standards is inconsistent or absent. This example highlights the urgent need for stronger provincial support to enforce COA conditions and to require minimum standards for development.

#### **Case Study 2: Encroachment and Trespass by Developers (Russell Avenue)**

Residents adjacent to a redevelopment project reported repeated unauthorized use of their property by the developer, including heavy machinery operating on their land, fences being damaged, and the driveway being obstructed without consent. Despite multiple complaints, enforcement bodies provided limited assistance. Ottawa Police treated the matter as a civil dispute, while City staff noted that, absent a formal encroachment agreement, the City had no effective enforcement tools. This left residents exposed to ongoing property damage. This case underscores the need for amendments to the *Trespass to Property Act* to explicitly prohibit unauthorized encroachment during demolition and construction. Strengthened provisions, such as escalating penalties, non-monetary sanctions, and the ability to levy Administrative Monetary Penalties (AMPs), would empower municipalities to intervene promptly and effectively.

## **CONSULTATION**

The Councillor's office has received multiple complaints and inquiries from residents in the Rideau-Vanier ward regarding unpermitted access to their properties during nearby construction projects, as well as violations of conditions attached to COA approvals. These concerns have been echoed by community associations who support a more robust enforcement framework.

Preliminary discussions with staff from By-law and Regulatory Services and Building Code Services department have also affirmed that these issues present enforcement challenges under current legislation.

## **TERM OF COUNCIL PRIORITIES**

This report directly supports the Term of Council Priority:

**“A city that has affordable housing and is more liveable for all”**

By improving legislative tools to protect residents from construction-related nuisances and enforcing planning conditions more effectively, the City will enhance neighbourhood livability, increase public trust in development processes, and ensure that intensification proceeds in a way that respects existing communities. These efforts support safer, more predictable, and equitable outcomes in Ottawa.

Strategic Objective #2: **“Increase housing supply and support intensification”**

Clearer and stronger penalties for construction encroachment will help reduce costly delays caused by disputes between developers and neighbours, allowing projects to move forward on time and within budget. At the same time, better enforced COA conditions will ensure that intensification projects respect community standards, reducing opposition and creating a more stable and predictable environment for builders. Thus, the City can encourage more sustainable and efficient housing growth.