

TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON AUGUST 22, 2016
FROM:	JOHN BRAAM, P.ENG. MANAGING DIRECTOR, ENVIRONMENTAL & ENGINEERING SERVICES AND CITY ENGINEER
SUBJECT:	STREET BOUNDARY FEATURE OWNERSHIP AND MAINTENANCE POLICY

RECOMMENDATION

That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer the attached proposed by-law (Appendix 'A') **BE INTRODUCED** at the Municipal Council meeting to be held on August 30, 2016, to adopt a policy for administratively determining ownership and the responsibility for maintenance of street boundary features located along the limits of City owned road allowances for such things as fences, noise barrier walls and retaining walls.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None.

2015-19 STRATEGIC PLAN

This report supports the Strategic Plan through the strategic focus area of *Leading in Public Service* by providing clarity in support of a more open, accountable and responsive municipal government.

BACKGROUND

The limits of major road allowances in the City are often bounded by fences, hedges, noise barrier walls and retaining walls which can be collectively categorized as “street boundary features”. Such features may have been installed by the City, contractors, and developers or by abutting property owners for many reasons.

Fences and hedges, for example, are most often installed by property owners to provide privacy and property protection. Noise barrier walls are typically installed by developers in order to satisfy noise attenuation requirements required by subdivision agreements or by the City in connection with road widening projects. Retaining walls may be constructed by the City in order to protect the travelled roadway or by property owners in support of landscaping projects.

The circumstances surrounding the installation and ownership of street boundary features are often well known at the time of installation but can become less clear with the passage of time which can lead to confusion over whom has the responsibility for the feature’s maintenance. The purpose of the draft Street Boundary Feature Ownership and Maintenance Policy is to formulate a clear set of rules for

administratively determining ownership and ultimately the responsibility for maintenance of street boundary features.

DISCUSSION

Why is a Street Boundary Feature Ownership and Maintenance Policy needed?

The varied circumstances under which street boundary features are constructed coupled with the fact that such features are located on or very near the boundary between the road allowance and private property can lead to uncertainty as to ownership and whom is responsible for the feature's maintenance. Therefore it is important there be a clear set of rules that Civic Administration can rely on to administratively determine ownership of these features and, ultimately, the responsibility for maintenance and associated risk management. Establishing a formal policy also supports the City's goals of ensuring transparency in municipal governance.

How is street feature ownership determined?

The ownership and responsibility for maintenance for street features that are the subject of an easement agreement, encroachment agreement or maintenance agreement should be self-evident. The vast majority of street boundary features, however, are not subject to any such agreements and these require investigation to determine ownership and responsibility for maintenance.

In most cases, street features that have been installed by the City on municipal road allowances are City owned and features installed by private property owners on their property are privately owned. However where there is uncertainty of ownership, either because the feature is not found to be in its expected location or because there is insufficient information available about the feature's origin, Civic Administration examines the following criteria to draw a conclusion about the feature's ownership:

- Who installed the feature?
- When and for what purpose was the feature installed?
- The nature of the feature (form, construction materials used etc.)
- Where was the feature intended to be installed?
- Where is the feature actually located?

When administratively determining the ownership of a street feature, emphasis is placed on who constructed it, why was the feature constructed and where the feature was intended to be located. The actual location of the feature (as in whose property the feature is on) is a minor consideration.

Does the Policy reflect changes to current practices?

For the most part, no. Generally, Civic Administration has been following the criteria set out in the proposed policy for determining the responsibility for maintenance of street features. But there have been situations where the rules have been applied differently as the result of informal "handshake" agreements between the City representatives and property owners, mostly related to the installation of street boundary features along capital widening projects. The problem with these "informal understandings" is that they are not well documented and as properties change hands the new owners may be surprised to find the City considers them to be responsible for maintaining certain street boundary features they assumed were the

City's responsibility. The proposed policy aims to establish clear rules and eliminate any source of confusion as to the responsibility for maintenance of street boundary features going forward regardless of any informal understandings in the past. In particular, it should be noted that adopting the new policy will not result in any additional responsibilities or costs being pushed onto property owners. Rather, the policy will result in the City taking on some limited additional maintenance responsibilities.

What are the policy's general maintenance provisions?

Street boundary features that are deemed to be privately owned under this policy will be left to the property owner to deal with (i.e. maintain, risk management). If the feature is structurally failing or poses a danger to the public and the property owner refuses to take corrective action, the City's By-law Enforcement Division will take appropriate action.

Where the street boundary feature is deemed to be City owned, the City will consider all options before undertaking any maintenance and repairs, including the option to replace the feature with a different product or remove the feature entirely if possible. Structural repairs are always given priority over esthetic maintenance. For example, a failing retaining wall will be given a higher priority over fence painting. In the absence of applicable regulations, inspection frequencies shall be undertaken at the City's discretion.

CONCLUSION

In order to improve consistency and transparency in the determination of responsibility for street boundary feature maintenance, it is recommended the proposed Street Boundary Feature Ownership and Maintenance Policy be approved.

Acknowledgements

This report was prepared with input from John Parsons (Transportation and Roadside Operations). The Policy was reviewed by David Munteer (Legal Department).

PREPARED BY:	REVIEWED AND CONCURRED BY:
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RECOMMENDED BY:	
JOHN BRAAM, P.ENG. MANAGING DIRECTOR ENVIRONMENTAL SERVICES AND CITY ENGINEER	

cc: John Parsons, David Munteer

APPENDIX 'A'

Bill No. [XXX]
2016

By-law No. [XXXX]

A By-law to govern the process for administratively determining ownership and the responsibility for maintenance of street boundary features located along the limits of municipal road allowances.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

WHEREAS subsection 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the powers of a municipality under that Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their own affairs as they consider appropriate and enhance their ability to respond to municipal issues;

WHEREAS subsection 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may pass by-laws within the following spheres of jurisdiction respecting: Highways at subsection 11(3)(1) and Structures, including fences and signs at subsection 11(3)(7);

WHEREAS it is deemed expedient for the Municipal Council to adopt a policy for the purposes of administratively determining ownership and the responsibility for maintenance of street boundary features located along the limits of municipal road allowances;

AND WHEREAS this policy is intended to provide clear guidelines for members of Civic Administration with respect to administratively determining ownership and the responsibility for maintenance of street boundary features located along the limits of municipal road allowances.

NOW THEREFORE The Council of the Corporation of the City of London hereby enacts as follows:

1. The attached Street Boundary Feature Ownership and Maintenance Policy (Schedule 'A') to govern the process for administratively determining ownership and the responsibility for maintenance of street boundary features located along the limits of municipal road allowances is hereby adopted.
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council _____, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading –
Second reading –
Third Reading -

Schedule A'

Street Boundary Feature Ownership and Maintenance Policy

POLICY STATEMENT

All street boundary features located along or within close proximity to the road allowance limit, also being the limit of private property, including such things as fences, hedges, noise barrier walls, retaining walls and subdivision entrance features that are not otherwise covered by an applicable easement agreement, encroachment agreement or maintenance agreement, shall be subject to this Street Boundary Feature Ownership and Maintenance Policy.

EXCLUSION

Street Boundary Features that are the subject of an easement agreement, encroachment agreement or maintenance agreement are exempted from this policy since the responsibility for maintenance is self-evident.

PURPOSE

The Street Boundary Feature Ownership and Maintenance Policy establishes the criteria for;

- 1) Administratively determining ownership and therefore the responsibility for maintenance of street boundary features, and
- 2) The basic level of service for maintenance for those features that are deemed to be owned by the City according to this policy.

Establishing clear criteria used to administratively determine ownership of street boundary features enhances transparency for both Civic Administration and property owners when determining the responsibility for maintenance of those features.

The Street Boundary Feature Ownership and Maintenance Policy is designed to act as a companion document to By-law S-1 ('Streets By-law') and By-law PS-6 ('Fence By-law') and reflects the City's long term practices in regards to street boundary feature maintenance.

DEFINITIONS

"City" means The Corporation of the City of London.

"City Engineer" means the employee of the Corporation of the City of London holding the title of City Engineer, or his or her designate.

"City Records" means any record of the City of London include Engineering Record Drawings that provides information about the Street Boundary Feature.

"Street Boundary Feature" means any type of vegetation or man-made feature or object which lies on or near the limit of the City owned road allowance and private property, and includes such things as fences, noise barrier walls, retaining walls, subdivision entrance features, hedges and vegetation screens.

"Property Owner" means the registered owner of the property abutting the Street Boundary Feature.

CRITERIA FOR DETERMINING OWNERSHIP

The following criteria shall be followed for administratively determine ownership of the Street Boundary Feature.

1. **Property Owner installed.** Street Boundary Features erected by Property Owners along the limit of the adjacent road allowance are deemed to be privately owned regardless of whether the feature is located on the boundary, on private property or on the road allowance.

2. **City installed.** The intended location of the Street Boundary Feature as evidenced by City Records shall be used to determine ownership of the feature. Features intended to be installed on private property shall be owned by the Property Owner, and features intended to be install on City property shall be owned by the City.
3. **The intended location** of the Street Boundary Feature as evidenced by City Records shall take priority over the actual constructed location for determining ownership.
4. **Where the circumstances surrounding the constructor and intended location cannot be ascertained** the nature of the Street Boundary Feature, materials used, date of construction and as-constructed location shall be considered when determining ownership.
5. **Boundary feature “returns” located on private property.** Unless specifically covered by an easement agreement in favour of the City, any portions of boundary feature “returns” that run perpendicular to the road allowance onto private property (for example, along driveway entrances or property sidelines) are deemed to be owned by the Property Owner regardless of the whom erected the feature.

Feature Specific Considerations

Fences

With the exception of fences installed in conjunction with City owned retaining walls and fences that separate City owned window streets from arterial roadways, all fences installed along the limits of road allowances are deemed to be owned by the abutting property owner regardless of whether they are located on the boundary, on private property or on the road allowance.

Noise Barrier Walls

Noise Barrier walls installed by the City or on the City’s behalf by a contractor or subdivision developer and subsequently assumed by the City, that are approved for assumption by the City Engineer (currently includes only masonry and “Durisol” walls, subject to change from time to time) that were intended to be located on the 0.3 metre reserve or the road allowance, are deemed to be owned by the City. Otherwise, noise barrier walls are deemed to be owned by the adjacent Property Owner.

Retaining Walls

Retaining walls installed by the City or on the City’s behalf by a contractor or subdivision developer and subsequently assumed by the City, that were intended to be located on the 0.3 metre reserve or the road allowance as evidenced by City Records, are deemed to be owned by the City. Otherwise, retaining walls are deemed to be owned by the adjacent Property Owner.

Fences erected in conjunction with retaining walls in order to satisfy building code requirements are deemed to be owned by the owner of the retaining wall regardless of where the fence is located.

Subdivision Entrance Features

Unless proven otherwise, subdivision entrance features are intended to be erected on private property and are therefore deemed to be privately owned.

Hedges

Hedges and vegetation screens are deemed to be owned by the adjacent Property Owner.

MAINTENANCE

The owner of the Street Boundary Feature as determined by this Policy is fully responsible for the feature's maintenance.

Where the City is deemed to be the owner of the boundary feature, the City shall consider all available options before undertaking any maintenance or repairs. The City may choose to replace the feature with a wholly different product or remove the feature entirely. Structural repairs shall be given priority over aesthetic oriented maintenance such as fence painting. Property owners may wish to undertake aesthetic maintenance themselves. Unless determined by regulation, inspection frequencies shall be at the City's discretion. All maintenance work is subject to budget availability.

APPLICATION

As of the date of approval by the Municipal Council of the City of London, this policy shall take full affect notwithstanding any practices or precedents that may have been previously established by Civic Administration in regards to Street Boundary Feature Ownership and Maintenance.