



**STAFF REPORT
ACTION REQUIRED**

**Review of Paid Duty Officers' Traffic Control
Assignments**

Date:	October 11, 2011
To:	Public Works and Infrastructure Committee
From:	Gary Welsh, General Manager, Transportation Services
Wards:	All
Reference Number:	P:\2011\Cluster B\TRA\TMC \Pw2011004.tmc (AFS No. 14663)

SUMMARY

This report is in response to the Auditor General's review of the Toronto Paid Duty Police Officer System and his recommendations related to the Transportation Services Division, as well as the direction given by the Audit Committee at its May 12, 2011 meeting.

This report recommends eliminating the specific requirement for hiring paid duty officers in the Transportation Services Division's permits, documents, and policies. To provide guidance on the use of police officers at Transportation Services Division projects, a new Memorandum of Understanding between the Transportation Services Division and the Toronto Police Service has been developed. This report recommends that the previous policy of requiring a paid duty officer(s) whenever there is construction within 30 metres of a signalized intersection be eliminated. To ensure safety of all road and right-of-way users, Transportation Services and Toronto Police Service staff and the applicant will discuss and determine the appropriate traffic control measures for the proposed construction project or street event.

These changes will reduce the requirements for paid duty officers at construction projects and street events resulting in savings to the City and taxpayers.

RECOMMENDATIONS

The Transportation Services Division recommends that City Council:

1. Revoke the existing Memorandum of Understanding: Guidelines for Paid Duty Police between Toronto Police Service and Transportation Services Division.

2. Approve the new Memorandum of Understanding: Guidelines for Road Occupancy Traffic Control outlined in Appendix A to this report.
3. Request the General Manager of the Transportation Services Division to remove all references to paid duty officers from permits, guidelines, and documents granted/owned/managed/used by the Transportation Services Division and replace with appropriate traffic control requirements as summarized in Table 1 of the Memorandum of Understanding outlined in Appendix A to this report.
4. Request the Executive Director of Technical Services to remove all reference to paid duty officers from the “Standard Construction Specifications for Roads”, “Municipal Consent Requirements for the Installation of Plant Within City of Toronto Streets” and any other applicable document and replace with appropriate traffic control requirements as summarized in Table 1 of the Memorandum of Understanding outlined in Appendix A to this report.
5. Request the General Manager of the Transportation Services Division to meet quarterly in 2012 with the Toronto Police Service to review the progress in the implementation of the new traffic control requirements policy and report as needed to the Public Works and Infrastructure Committee.

Financial Impact

It is estimated that removing paid duty officer requirements as outlined in this report for traffic control could result in an annual City savings of \$1.3 million in 2012. These estimated savings are apportioned as follows: \$1.0 million in the Transportation Services Division operating budget, \$0.12 million in the Toronto Water operating budget, and \$0.18 million in the Technical Services capital budget.

DECISION HISTORY

On April 7, 2011, the Auditor General presented his review of the Toronto Police Paid Duty system to the Toronto Police Services Board in a report entitled: Toronto Police Service, Police Paid Duty – Balancing Cost Effectiveness and Public Safety.

The Auditor General’s overview of the existing paid duty officer program recommended that the General Manager of Transportation Services review the current criteria for determining paid duty police requirements, with a view to developing more effective criteria in delineating the need for paid duty policing in traffic control. Of particular interest is the request to review the policy requirements for a paid duty officer(s) to be present when construction activity is taking place within 30 metres of a signalized intersection.

On May 12, 2011 the Audit Committee considered the Auditor General's report and recommended the elimination of the 30 metre policy and the current Memorandum of Understanding with Toronto Police Service which governs the use of paid duty officers. The General Manager of Transportation Services was directed to develop a new policy for traffic control at City construction sites and develop more effective criteria in delineating the need for paid duty policing in traffic control. These recommendations were affirmed by City Council at its meeting of June 13 and 14, 2011.

City Council, at its meeting of September 25 and 26, 2011 to consider the results of the Core Service Review, also directed that the Transportation Services Division eliminate the requirement for paid duty police officers where possible, and report on any necessary changes to effect this change.

ISSUE BACKGROUND

The Transportation Services Division is responsible for issuing permits for the occupancy of City roads for purposes such as road construction, construction on adjacent properties which require occupancy of the road for equipment placement (e.g. hoisting, excavation, or concrete pouring), utility repairs under the road surface, and events that will occupy the road (e.g. parades, charity runs, or street parties and festivals).

When issuing road occupancy permits, Transportation Services staff evaluate as to any safety issues which may, as a result, arise for road users (pedestrians, cyclists, and drivers) and determine if police officers are required to ensure the permitted activities will occur in a safe manner. A Memorandum of Understanding (MOU) with the Toronto Police Service outlining the guidelines for paid duty officers was created in 1995 and last revised in 2005. The MOU reflects provincial legislative requirements as well as long-standing procedures and protocols that, in the case of the 30 metre policy, were transferred from former municipalities. In addition, Toronto Police Service was not always able to assign on-duty police officers to assist with permit-related traffic control. As a result, Transportation Services staff has generally directed that paid duty officers be used to maintain traffic safety during road occupancy events and activities, and the City's Insurance and Risk Management records indicate no insurance claims have originated at a location where paid duty officers were present.

COMMENTS

Legislative Requirements for Traffic Control

For the purposes of directing traffic, the Highway Traffic Act permits the use of trained traffic control persons (TCPs) in limited circumstances while police officers are authorized to direct traffic where necessary, without restrictions. Similarly, the Ontario Occupational Health and Safety Act indicates that traffic control persons cannot direct traffic where there is more than one lane of traffic in the same direction or where the speed limit is higher than 90 km/h.

Notwithstanding the above-noted legislative circumstances, a reassessment of requirements for traffic control in road occupancy permits was undertaken, in view of the findings of the Auditor General report, as well as the overall corporate review of current processes mandated by the City's financial situation. Transportation Services staff met regularly to review road occupancy permits and practices, and consulted with contracted vendors requiring road occupancy permits, staff in other Divisions and in other Ontario jurisdictions, and representatives of the Toronto Police Service.

Preservation of Safety for all Road Users

Any activity, of any scale, which changes the rules of the road by occupying its lanes, boulevards, or sidewalks, requires a traffic control component to ensure the safe movement of all traffic – pedestrians, cyclists, and vehicles. The review determined that there are circumstances where the necessary traffic control can be achieved by means other than paid duty officers. As an example, traffic and/or crowd control at events should be part of the normal community policing duties of the Toronto Police Service. In other instances, the required traffic control action can be undertaken by traffic control persons, for example, traffic control of a road disruption on a local street or control of pedestrians when construction material is lifted over a sidewalk. In other circumstances, while paid duty officers would be requested to close a road for a planned event, marshals could maintain the closure for the duration of the event. All of these activities would take place when not contrary to relevant or applicable legislation.

In order to reflect options which balance safety with cost-effectiveness, the traffic control requirements in Transportation Services road occupancy permits will be modified to exclude specific reference to paid duty officers and, depending on the circumstances, be replaced with Table 1 in Appendix A to this report.

While all applicants will be encouraged to consult with Toronto Police Service, for those permits which require traffic control by a police officer, applicants will be required to consult with Toronto Police Service to determine if the traffic control can be conducted by on-duty officers or if it can only be undertaken by paid duty officers.

The various permits that are granted for road occupancy can be consolidated into two principal categories, as described below.

1) Street events

The number of requests to use City roads to hold events has grown significantly. These events range from small block parties organized by local residents with minor traffic disruptions to major events which attract thousands of participants and have a significant effect on adjacent roads. An event is evaluated on the basis of its programmed activities, expected number of attendees, traffic impacts, timing, number of roads to be closed, emergency access, and overall public mobility.

To address these issues, City Council, at its January 27, 2009 meeting, adopted a new consolidated By-Law for Street Events and its associated Street Event Implementation Guidelines. The latter makes detailed reference to the many agencies that must be consulted by the applicant in order to comply with the necessary conditions before a permit for the event will be granted.

Specifically related to policing and traffic control, the Guidelines require the applicant to:

(16) Toronto Police Service (Police):

- (a) Consult with and arrange for Police services, where required;
- (b) Arrange for traffic control, if required;
- (c) Consult with Police to determine placement of installations for crowd safety in large events;
- (d) Consult with Police regarding their presence to keep the peace;
- (e) Consult with Police to determine the use of event private security/marshals;
- (f) Consult with Police regarding the service of alcohol/beer gardens;
- (g) Consult with Police to determine the use of Police, security or marshals stationed at all road closure points to ensure unauthorized vehicular entry, except emergency vehicles.

The Guidelines acknowledge that control of the event, particularly traffic control, can be accomplished by means other than paid duty officers, such as security or marshals. The Guidelines propose that the applicant consult with the Toronto Police Service to determine the most appropriate manner in which public safety can be maintained for the event without requiring that traffic control be necessarily undertaken by paid duty officers.

2) Signalized intersections and other road construction activities

In his review of current paid duty officer requirements, the Auditor General makes specific reference to the "30 metre rule" which states that paid duty officers should be present to permit safe construction activities on the road allowance within 30 metres of a signalized intersection. This requirement is a policy that originated with the former Metropolitan Toronto – which had arterial roads and all signalized intersections under its jurisdiction. This requirement allowed Metropolitan Toronto to control construction activities that could affect, or be affected by, the operation of signalized intersections. The 30 metre rule (formerly 100 feet) is often referenced in traffic safety and control documents as a clear visibility distance that has to be preserved to ensure proper reaction and braking times for approaching operators and drivers at road obstructions.

One document that makes several references to this safe visibility distance is “Part X – Rules of the Road” in Chapter H.8 of the Highway Traffic Act. The 30-metre rule is also applied to transportation planning issues (e.g. access driveway control) as well as requirements for road operations (e.g. road construction or lane closures). At amalgamation, the 30-metre rule was reviewed and transferred as a policy into permit requirements for the new City of Toronto's Transportation Services Division. These requirements were later updated in consultation with the Toronto Police Service and embedded in a revised Memorandum of Understanding in 2005.

In his report, the Auditor General concludes that the permit requirement to have paid duty officers present within 30 metres of a signalized intersection does not need to apply at every location. The Auditor General indicates that a search of other Canadian jurisdictions did not find that similar traffic control requirements are mandated – although comparison with other municipalities may not always be applicable, given Toronto has the highest number of vehicles and pedestrians on its roads. The Ontario Ministry of Transportation's guide to traffic management and traffic control devices, “Ontario Traffic Manual (OTM) – Book 7 – Temporary Conditions” also does not make specific reference to the need to engage paid duty officers for traffic control.

The rules and regulations of “Part X – Rules of the Road” in Chapter H.8 of the Highway Traffic Act outline in detail the manner in which road users must behave on the road under normal circumstances. However, when there are activities such as road construction, traffic signals being installed or turned off for maintenance, when a lane is occupied in a manner that forces drivers to execute turns from non-standard lanes, and when required safe visibility is obstructed, etc., there are potentially confusing conditions for which it is necessary to have traffic control presence with sufficient authority to ensure that road users can continue to travel safely.

The type of traffic control required (marshals, traffic control persons, on-duty police officers, or paid duty officers) depends on the road type (its classification, speed limit, number of lanes, etc.) and the nature of the occupancy (i.e. partial closure or full closure, etc.). Recognizing that there are various ways in which safe traffic control can be maintained during a road occupancy, the wording in all road occupancy permits will be modified to exclude specific reference to paid duty officers and make more appropriate reference to the necessary traffic control based on the above parameters and guidelines in Table 1 of Appendix A. A modified road occupancy permit will require the applicant to consult with Toronto Police Service and Transportation Services to determine the appropriate traffic control presence required for the specific road circumstance, rather than generically requiring the presence of a paid duty officer(s) for any and all road occupancy events.

There are also other City of Toronto documents, such as the “Standard Construction Specifications for Roads” or the “Municipal Consent Requirements for the Installation of Plant within City of Toronto Streets”, that make specific reference to paid duty officers as a requirement for traffic control. These documents will also have to be modified to ensure that they are consistent with the proposed new language for the determination of traffic control requirements.

3) Memorandum of Understanding

In the 1990s, the Metro Toronto Transportation Department undertook increased road construction and signal installation, requiring the presence of police officers to control traffic. In the case of busy roads or major intersections, the Metropolitan Toronto Police Service (MTPS) determined that, under certain circumstances, two or three officers might even be required, and that they had insufficient on-duty staff to attend in most instances. This led to a greater use of paid duty officers and created a financial pressure on existing budget allocations. As a result, a Memorandum of Understanding was developed between Metro Transportation, the Metropolitan Toronto Police Service with collaboration from the Ministry of Labour in 1995.

The original 1995 Memorandum of Understanding has been modified numerous times to reflect changes such as municipal references due to amalgamation and the definition of emergencies (see Revisions in Appendix A for full details).

The Memorandum of Understanding addresses the conditions and the processes that will be followed by Transportation Services and Toronto Police Services in determining paid duty police presence at planned or scheduled road occupancy events, as well as unexpected road emergency situations such as, a sewer or watermain break, failure of the traffic signal system, or a gas leak that affects traffic.

It should be noted that the original Memorandum of Understanding did not address situations where an emergency is caused by a major event (for example, a building collapse or a fire). These emergencies present an immediate threat to public safety and require that the emergency scene be initially controlled by an emergency service provider (Police, Fire, or EMS). For the duration of these emergencies, any required traffic control to secure the event is generally provided by on-duty police officers. Arrangements for extended protection should be the subject of agreements between the Toronto Police Service and the affected City division such as Building Services, Shelter, Support and Housing Administration or others as required.

As stated earlier in this report, the Memorandum of Understanding between the Toronto Police Service and the Transportation Services Division should be revoked and replaced with a new Memorandum of Understanding which removes reference to paid duty officers and establishes new guidelines for road occupancy and traffic control, as outlined in Appendix A to this report.

Conclusion

Traffic control is required to ensure all road users remain safe when the rules of the road are modified for permitted events and road occupancies. In certain situations and for different road occupancy activities, the use of police officers (either on-duty or paid duty) for traffic control is necessary. However, there are other circumstances where other options such as marshals or traffic control persons can provide the required traffic control.

All references to paid duty officers and the 30-metre rule will be removed from Transportation Services permits, guidelines, documents, and the new Memorandum of Understanding between Toronto Police Service and Transportation Services. Each request for a road occupancy permit will be reviewed by the applicant with Transportation Services and Toronto Police Service to determine what method of traffic control will be appropriate and sufficient to allow the activity to occur safely.

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ATTACHMENTS

Appendix A – Memorandum of Understanding: Guidelines for Road Occupancy and Traffic Control

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City of Toronto Police Service and Transportation Services

Memorandum of Understanding: Guidelines for Road Occupancy and Traffic Control

The following information should be used to determine traffic control at permitted events or work sites.

1. Transportation Services has authority over the issuance of permits and the determination of traffic control required for permitted activities on all City roads. The Toronto Police Service, in conjunction with Transportation Services Road Inspectors, enforces this authority on behalf of Transportation Services.

ROAD EMERGENCY EVENTS:

2. In the event of **ROAD EMERGENCY SERVICES** that have to be performed by City staff, City contractors or Utilities and which require assistance from Toronto Police for traffic control, on-duty officers should be requested through a phone call to the Toronto Police Service Communications Centre at (416) 808-2222, subject to the following criteria:

ROAD EMERGENCY SERVICE is deemed to be any unscheduled maintenance where:

- Public safety or health is threatened;
- IMMEDIATE action is required;
- The public is without an ESSENTIAL service.

Examples:

- Sewer or water main break;
- Electrical failure (traffic lights, etc.);
- Leaking of gas distribution system.

3. At any **ROAD EMERGENCY** work site, a representative of the affected work must respond to the site as soon as possible to assess the situation, determine the necessary repairs and establish the time frames required to complete these repairs. Police Officers will document any instance where a representative of the affected work fails to attend the location within 1.5 hours of the call being received by the Service and forward this information to the Unit Commander of Traffic Services.

4. In circumstances where the required work can be completed **within 3 hours** of the Police Service receiving a request to attend an emergency location, a **regular on-duty** police officer will protect the site, subject to exigencies of the Service. A large scale emergency may preclude the attendance of an on-duty officer. If the emergency repair is anticipated to take **more than 3 hours**, a **paid duty police officer** shall be ordered immediately and the regular **on-duty officer shall stay on site until the arrival of the paid duty officer**.

SCHEDULED EVENTS:

5. Traffic control for ALL SCHEDULED or REGULAR MAINTENANCE activities shall be determined by Transportation Services staff, in consultation with Police Services and the applicant and the nature of the traffic control will be specified in the appropriate road occupancy permit.
6. A Transportation Services representative, in consultation with the Toronto Police Construction Liaison Officer, will determine the nature of traffic control and if there is a need for police officers for all other activities on City roads.
7. Where the permitted road occupancy creates a disruption to the rules of the road, appropriate traffic control should be established to ensure that the safety of all road users is maintained for the extent of the road occupancy, based on the criteria in attached Table 1 to these guidelines.
8. Traffic Control Persons (TCP) should be considered to control locations with a single lane of one-way traffic flow. A TCP can also control pedestrian movements off the traveled portion of the roadway. A TCP can also control pedestrian movements at a signalized intersection if the signal indications are clearly visible and the TCP is not required to stop traffic. If more than one lane or direction of traffic flow is to be controlled or stopped, then a police officer will be required as per OTM Book 7.
9. Marshals should be considered to maintain road closures at permitted events.
10. A static barrier (i.e. crowd control barrier) may be acceptable to close crosswalks at a signalized intersection depending on the pedestrian and vehicle volumes. Yellow 'Caution Tape' is not recognized as an acceptable barrier.
11. If Paid Duty Officers are determined to be the required traffic control, these Officers shall be arranged through the Central Paid Duty Office by faxing your request to (416) 808-5042. If further assistance is required, the Central Paid Duty Office at (416) 808-5048 should be contacted.
12. The Ministry of Labour is the governing agency responsible for the safety of workers and the public. The Toronto Police Service, as part of their responsibility as the employer of Police Officers, is required to provide the training for, the equipping of, and ensuring the use by members of personal protective equipment.

13. The contractor is responsible for providing traffic control at a permitted road occupancy, as required in the conditions laid out in the activity permit.
14. **Should a dispute arise** between police officers on patrol with regards to the need for traffic control at a permitted road occupancy site, a Traffic Services Construction Liaison Officer and a representative of Transportation Services, shall consult to determine if additional traffic control measures are required at the permitted site.

The above guidelines do not preclude the need for a site meeting to discuss traffic safety related issues, hours of work, etc, with the Transportation Services and Toronto Police representative and other agencies.

Memorandum of Understanding Revisions	
Date	Amendments
1995	Original document developed in consultation with officials from the Ministry of Labour, Metro Toronto Police Service and Metro Transportation Services.
August 21, 1998	Removal of reference to “Metro”
February 16, 1999	Addressed the need for more than one paid duty officer on site, the use of static barriers for control of pedestrians and the use of paid duty police officers at EMERGENCY work sites as opposed to regular on-duty police officers.
May 18, 2005	In consultation with the Ministry of Labour, Toronto Police Service, City Transportation Services and City utility contractors, addressed the change in paid duty policy with respect to the Central Paid Duty Office and distribution of paid duties to traffic and divisions.
September 26, 2011	Addressed Auditor General and City Council recommendations to reduce number of paid duty officers required as a result of issuance of road occupancy permits. Updated 30 metre policy at signalized intersections such that police officers are no longer always required.

Table 1: Deployment of Traffic Control in Road Construction Activities

Conditions under which Traffic Control may be required	Normal regulatory posted speed 60 km/h or lower, one lane or reduced to one lane	Normal regulatory posted speed 70 km/h to 90 km/h, one lane or reduced to one lane	Any speed, more than one lane in each direction
To protect workers on public way	Traffic Control Persons (TCP) can be used	TCP can be used	Police presence is required
To protect construction vehicles crossing roadway	TCP can be used	TCP can direct construction traffic only, not public traffic	Police presence is required
To protect construction vehicles entering a roadway	TCP can be used	TCP can direct construction traffic only, not public traffic	Police presence is required
Electrical contractor work on traffic control signals	Police presence is required if there is an absence of traffic control device display and/or if the vehicle/pedestrian indication(s) are to display conflicting movement. If not, follow Ontario Traffic Manual Book 7 – Table 6 – Deployment of Traffic Control Persons (TCP). If the TCP conditions are not met, then police presence is required.		
Construction, Surface Maintenance, Utilities, Toronto Water	Follow Ontario Traffic Manual Book 7 – Table 6 – Deployment of Traffic Control Persons (TCP). If the TCP conditions are not met, then police presence is required.		

Note 1: Table 1 is a modified version of OTM Book 7 – Table 6: Deployment of Traffic Control Persons (TCP) that takes into consideration City of Toronto Operational Guidelines.

Note 2: See Occupational Health and Safety Act and Regulations for Construction Projects, R.S.O. 1990, Regulations 213/91 as amended by Regulations 631/94 and 145/00.

Note 3: If conditions under Ontario Traffic Manual Book 7 – Table 6 – Deployment of Traffic Control Persons (TCP) are satisfied, the TCP(s) must be positioned in a manner which will not conflict with the traffic control device operation. If this is not possible, police presence is required.

Note 4: For City of Toronto employees, contractors, and sub-contractors, traffic control work is performed in compliance with the provisions of: The City's Traffic Control policy and its guidelines; the Regulations for Construction Projects (sections 67-69, 104-106, and 186-187); the Ontario Traffic Manual for Temporary Conditions (OTM Book 7 and Field Edition); and the Handbook for Construction Traffic Control Persons.

Note 5: In reviewing traffic control measures related to road construction activities, Transportation Services, Toronto Police Services and the applicant must ensure that the safety of all road users is preserved.