



STAFF REPORT ACTION REQUIRED

Update on Paid Duty Activities

Date:	April 4, 2016
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

City Council has directed City staff, and requested the Toronto Police Services Board (TPSB), to explore alternative models for the delivery of traffic control services provided by police officers on paid duty. Further, City Council has directed staff to consult with special event organizers and Business Improvement Associations (BIAs) on their use of paid duty services. This report provides an update on these efforts, as well as other initiatives related to paid duty services.

Consultations have been held with provincial officials to determine whether there are any legislative barriers to using special constables appointed by the TPSB to engage in traffic direction and to explore other legislative changes that could enable other persons to be authorized to conduct active traffic direction. This report recommends amendments to the Highway Traffic Act (HTA) and Provincial traffic guidelines to enable the use of alternative models.

Special event organizers were also consulted on means to reduce paid duty costs and improve service delivery. This report recommends that TPSB and TPS consider suggestions made by this end user group in the development of guidelines for paid duty. It is also recommended that the TPS consult with City staff and enter into a new Memorandum of Understanding to carry out paid duty requirements for the City.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council request the Province of Ontario to amend Section 134(1) and (2) of the Highway Traffic Act to permit alternatives to police officers, such as special constables, peace officers, municipal officers, and other authorized officials, to direct traffic and close highways.
2. City Council request the Province of Ontario to amend Ontario Traffic Manual Book 7 Temporary Conditions to remove language that states that paid duty officers must be used to control traffic within 30 metres of an intersection with active signals.
3. City Council request the Toronto Police Services Board to develop guidelines for paid duty policing in consultation with the appropriate City officials to align the guidelines with City permit requirements, and with consideration of suggestions made by special event organizers to reduce costs and improve service set out in Attachment A to this report, and report to Executive Committee on the outcome.
4. City Council request the Toronto Police Services Board and the General Manager of Transportation Services, in consultation with the Toronto Police Service, to enter into a new Memorandum of Understanding regarding guidelines for traffic control during road occupancy.

Financial Impact

No direct financial impact will arise from the recommendations in this report. However, implementing these recommendations may reduce the current usage or costs of paid duty services by City divisions and agencies in future years.

In 2015, City divisions and agencies, other than BIAs, were charged \$1.49 million by the Toronto Police Service for paid duty services.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

In response to a TPSB request, the Auditor General conducted an audit of the police paid duty system to assess operating effectiveness and efficiency, and officer compliance with paid duty policies. Presented to the TPSB on April 7, 2011, the audit report made a number of recommendations, including that the TPSB consider examining the feasibility and merits of the Vancouver Traffic Authority Program as an alternative to Toronto's current paid duty system. The TPSB approved the report and directed that it be forwarded to Audit Committee and Budget Committee of City Council.

At its meeting of June 14-15, 2011, City Council requested City staff to review paid duty requirements as part of City permit and policy requirements for special event, filming, public works and construction activities. Further, City Council requested City staff to develop a new policy for traffic control at City construction sites, and explore implementation of a traffic warden system

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.AU2.1>).

At its meeting of November 29, 30 and December 1, 2011, City Council approved wording of a new Memorandum of Understanding (MOU) with the TPS which included new traffic control requirements, and requested that relevant Transportation Services and Technical Services permits, guidelines and documents be amended to reflect the new traffic control requirements. City Council also directed that construction plans be publicly posted at construction sites, and that traffic control working on site receive a copy of the plans (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW9.7>).

At its meeting of April 3-4, 2013, City Council considered a report from the TPS addressing the Auditor General's specific recommendation regarding the Vancouver Traffic Authority, which was forwarded to Audit Committee by the TPSB

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.AU10.16>). The TPS report concluded that implementation of a system similar to Vancouver's in Toronto was not possible without legislative changes. City Council requested the TPSB and the City Manager to discuss with the Province of Ontario amending the relevant legislation to accommodate the Vancouver model and other options for traffic direction. City Council made similar requests to the City Manager at its meetings of June 10-13

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.AU15.9>) and

August 25-28, 2014

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX44.34>).

At its meeting of June 10-13, 2014, City Council directed the City Manager, in consultation with stakeholders such as event organizers and BIAs, to review the use of paid duty officers for celebrations, festivals and other special events, including the City of Toronto's licensing and permit requirements and policies, in an effort to minimize the cost to the event organizers and to report back to Executive Committee

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.AU15.9>).

On November 13, 2014, the TPSB authorized the development of guidelines with respect to paid duties in accordance with Section 31(7) and Section 49 of the Police Services Act (PSA), in consultation with the Chief, Board's legal counsel, the Toronto Police Association, the City of Toronto and the Province

(<http://www.tpsb.ca/component/jdownloads/send/27-2014/451-nov13pub>).

ISSUE BACKGROUND

Legislative Context

Provincial legislation and regulation relevant to active traffic direction (i.e. direction of vehicular and pedestrian traffic by a person) include the Highway Traffic Act (HTA), the Occupational Health and Safety Act (OHSA), the Police Services Act (PSA) and the Ontario Traffic Manual Book 7 Temporary Conditions (OTM Book 7).

Under Section 134(1) of the HTA , police officers, where they consider it reasonably necessary, may direct traffic to ensure orderly movement of traffic, to prevent injury or damage to persons or property, or to permit proper action in an emergency. Under Section 134(2), police officers may close a highway or any part thereof for the purposes of subsection (1). Under Section 223(1) of the HTA, the Minister of Transportation may appoint Province of Ontario staff as officers for the purpose of carrying out all or any of the provisions of the Act.

Ontario Regulation 213/91 made under the OHSA provides that Traffic Control Persons can direct traffic on a public right-of-way during construction or maintenance of highways, but shall not direct traffic for more than one lane in the same direction.

The PSA permits secondary activities under Section 49, which includes paid duty activities. Section 31(7) of the PSA gives police services boards the authority to develop guidelines in respect to secondary activities. Section 53 of the PSA provides for the police services board to appoint special constables and confer on them limited powers of a police officer, subject to the approval of the Solicitor General.

The Ministry of Transportation provides information and guidance on traffic control during temporary conditions through the OTM Book 7. In addition to advice on enforcing the HTA and implementing OR 213/91, the guidelines suggest that police officers must be used to control traffic within 30 metres of an intersection with active signals.

Current Implementation

Under current legislation, uniformed police officers of the TPS carry out active traffic direction and a security function in permitted circumstances where it is requested. This service is not generally part of their regular duty, but is considered a secondary activity under the PSA and provided through paid duty assignments. Requests for paid duty services are made to the TPS through the Central Paid Duty Office (CPDO), the Special Events Office and the local TPS division. The CPDO communicates opportunities for paid duty assignments to police officers electronically. Police officers volunteer to fill assignments, and carry them out while off-duty.

The TPS determines paid duty officer numbers, supervisory ratios, equipment requirements, vehicle rental fees and administration fees. Under current collective agreements, hourly paid duty rates for police officers and supervisors are set by the

Toronto Police Association. The full cost of paid duty services is charged to the requestor of the service, including a 15% administrative fee.

Following the Auditor General's 2011 review of paid duty, the TPS introduced changes to paid duty administration. On March 3, 2014, the TPS launched the Paid Duty Management System (PDMS) to improve paid duty processes and distribution, and to bring payments into compliance with Canada Revenue Agency requirements. 2015 was the first full year of data on paid duty charges under the PDMS. One of the benefits for the new system is that it improves the tracking of charges for paid duty services, as assignments and payments are processed through the TPS Central Paid Duty Office. However, process differences under the PDMS and the previous system make it difficult to accurately compare paid duty charges over time. Further, consistently identifying paid duty charges to third parties working on behalf of the City remains a challenge under the PDMS, as the TPS collects limited information about the paid duty requestors and requestors may not consistently declare when they are working on behalf of the City.

2015 Paid Duty Statistics	
Number of Paid Duties	39,716
Number of Officers Performing Paid Duty	3,132
Number of Hours	381,584
Police Constable Paid Duty Rate	\$68/hour
Total Officer's Payment	\$25,540,792
Administration Fee (15%)	\$3,842,790
Equipment Revenue	\$1,149,049
Total	\$30,532,631
Charges to City Divisions and Agencies	\$1,490,508
Source: Toronto Police Service	

The table above shows paid duty statistics for 2015, including payments to officers, administration fees, revenues from equipment rental and total paid duty charges of \$30.53 million. Total charges include charges of \$1.49 million to City divisions and agencies identified by TPS, representing 4.9% of total paid duty charges. Toronto Water, Transportation Services, Toronto Transit Commission, Economic Development and Culture, and other City divisions and agencies use paid duty services to support maintenance and construction in roadways, special events in right-of-ways and City-owned properties, and other activities.

COMMENTS

Overview

Toronto experiences frequent traffic disruption due to maintenance and construction on or adjacent to highways and roads, wide-loads travelling on city streets and film shoots, in addition to road closures and traffic congestion related to street and special events, concerts and large sporting events. In many situations, active traffic direction/temporary

traffic control is necessary to maintain vehicular and pedestrian traffic flow and safety of all right-of-way users.

In addition to the need for active traffic direction, many special events in streets and public spaces, concerts and sporting events host large numbers of people, and require security services to maintain order and initiate emergency responses.

The use of police officers working on a paid duty basis for active traffic direction and security at large events has benefits such as public recognition of authority, appropriate training, communication linkages to the police service and other first responders, equipment to support the assignment and a labour pool accustomed to working odd hours. However, concerns have been expressed regarding the current service model, including:

- Confusion about the police role, particularly related to traffic control during construction;
- Concern about the use of police for tasks that do not require such highly trained professionals;
- The inability of requestors to control costs or influence activities of paid duty officers;
- The inability of police to fill all paid duty requests; and
- The potential impact paid duty assignments may have on regular duty police work.

Following the Auditor General's report on paid duty in 2011, the TPS, TPSB and City staff have focussed largely on two objectives related to paid duty:

1. To seek alternatives to police officers for the delivery of paid duty services for traffic control.
2. To improve delivery of paid duty services by police officers.

Alternatives to Paid Duty for Traffic Control

The October 2012 report from the Toronto Police Service examining the feasibility of using an active traffic control model in Toronto similar to the one used in Vancouver concluded it could not be implemented without legislative change. The report suggests that because there is no definition of police officer in the HTA, it assumes that the definition from the PSA would be used, and notes that this definition specifically excludes special constables as police officers. However, it is the opinion of City Legal that the lack of definition of police officers in the HTA may not be an impediment to the use of special constables to enforce the HTA. Even though a special constable is not a "police officer" as defined in the PSA, a special constable can be given the partial authority of a police officer for limited purposes. As a result, City staff are of the view that special constables could be appointed under the PSA with the authority to direct traffic in temporary situations under the HTA.

In October 2015, senior City and TPSB officials met with representatives from the Ministries of Labour, Community Safety and Correctional Services, Transportation, and Municipal Affairs and Housing to discuss legislation related to active traffic direction authorities. City officials suggested three alternatives to the status quo use of paid duty officers to enable active traffic direction in roadways:

1. Expand authorities of traffic control persons beyond supporting limited construction-related activities under OHSA and/or the HTA.
2. Create an alternate authority under the HTA.
3. Appoint special constables under the PSA, authorized to direct traffic under the HTA.

Provincial staff have communicated that they see no legislative barriers to the use of special constables, appointed by the TPSB and approved by the Minister of MCSCS, to engage in active traffic direction (alternative #3). MCSCS is currently consulting on provisions in the PSA regarding special constables and considering proposals that would clarify their ability to engage in active traffic direction.

Provincial staff are currently exploring other possible legislative changes that could enable persons besides police officers or special constables to be authorized to conduct active traffic direction. City staff suggest that police powers should not be a prerequisite for directing traffic, and that other persons with appropriate training could fulfill the function safely and in a more cost effective manner. While a number of legislative amendments might accomplish this objective, the HTA arguably contains the most straightforward language regarding traffic direction authorities. As such, this report recommends that the Province of Ontario amend Section 134 of the HTA to clarify that special constables appointed with appropriate police powers can direct traffic and close highways and permit persons with alternative designations such as peace officers or municipal officers to do the same.

Another barrier to the use of alternatives to police officers directing traffic is current language in OTM Book 7. The guidelines are developed based on existing legislation and in consultation with select stakeholders. OTM Book 7 states that paid duty officers must be used to direct traffic within 30 metres of an intersection with active signals. As there is no apparent legislative basis for the statement, this report recommends that the Province of Ontario remove this language from OTM Book 7.

Improvements to Current Paid Duty System

Clarifying When Paid Duty is Required

Transportation Services issues road occupancy permits for most temporary activities in roadways. These include use of roads for construction related purposes (e.g. right-of-way maintenance and use for construction staging), special events in roadways (e.g. Caribana or Toronto Marathon), wide loads and other uses. The Toronto Film, Television and Digital Media Office issues permits for film shoots (e.g. parking or shoots on right-of-

ways), and TPS issues permits for parades. In response to City Council direction and in an effort to minimize unnecessary use of paid duty services, Transportation Services reviewed its guidelines for road occupancy permit holders in 2011 to clarify conditions where the presence of police officers may be required by legislation. As part of its regular practice, Transportation Services issues these guidelines to permit holders when their permits are approved. City staff and third party contractors working within the City's right-of-way are expected to adhere to the guidelines and use police officers on a paid duty basis only when legally required. Further, City staff have reviewed permit materials and guides for events on City property to ensure that use of police officers on a paid duty basis is required for a permit only where it is legally necessary.

Also in 2011, City Council requested the Toronto Police Service enter into a Memorandum of Understanding (MOU) on traffic control by paid duty officers, which would govern the issuance of paid duty assignments in line with the City's guidelines. While the City and TPS generally adhere to the 2011 MOU, it was not executed at the time. Changes since 2011 to the TPS paid duty system, the Transportation Services permit system, OTM Book 7 language and TPS procedures, in addition to the development of TPSB guidelines for paid duty, warrant a staff review of current approaches and an opportunity to improve alignment of current processes and requirements among stakeholders.

This report recommends that City Council request that the Toronto Police Services Board consult with City staff on Toronto Police Service guidelines and procedures for paid duty activities, with the objective of aligning them with City requirements for traffic control (which include requirements for paid duty officers). Further, this report recommends that City Council request that the Toronto Police Services Board and the General Manager of Transportation Services negotiate a new MOU regarding guidelines for road occupancy traffic control, and report back to Executive Committee on the outcome.

Clarifying Roles and Responsibilities

Through the centralized administration of paid duty introduced in 2014, the TPS has improved its guidance to police officers on paid duty assignments through a number of mechanisms. Every police officer that wishes to be considered for paid duty assignments must acknowledge standard Terms of Agreement annually, which outlines their responsibilities and accountability while performing paid duty services administered by the TPS. The new Paid Duty Management System (PDMS) provides assignment-specific information to paid duty officers, such as site contact and assignment details. PDMS may also provide guidelines outlining roles and responsibilities for paid duty officers specific to construction in the right-of-way, which were developed in consultation with Transportation Services. The TPS amended paid duty procedures in 2014, which now provide guidance on roles and responsibilities of police officers, supervisory officers, the Sergeant CPDO and Officers in Charge – Home Unit, Host Unit and Operations Centre. As well, the procedures now reference the MOU with Transportation Services and the City's Entertainment Gatherings Protocol.

The Toronto Police Services Board is currently working with the Chief to develop guidelines for paid duties as a form of secondary activity under Section 31(7) and Section 49 of the PSA. The Board recognizes that any guidelines that it might establish will have a significant impact on how both the public and private sectors' needs for security services and police assistance may be satisfied in many different situations, and the Board may wish to consider whether certain duties currently performed on a paid duty basis should be delivered in alternate ways or discontinued. While the TPSB has yet to consult with City staff on the development of these guidelines, an opportunity exists to align City permit processes and requirements with TPSB guidelines for paid duties.

Suggestions by Special Event Organizers

As directed by City Council, staff consulted with special event organizers and BIAs on their use of paid duties in May and June of 2015. The Event Support Unit within the Economic Development and Culture Division supports a network of special event organizers who deliver a wide range of events in public spaces throughout Toronto. This group was consulted using an online survey tool, and were asked a combination of closed and open-ended questions about the events they organize and their use of paid duty officers to support the events. In total, organizers for 43 events, ranging from large events with over 200,000 participants to local street festivals, responded to the survey. A summary of survey results is shown in Attachment A.

Survey event organizers reported a number of challenges in their engagement with the current paid duty system. Fifty-eight per cent (58%) of respondents cited no guarantee that the request would be filled in using paid duty services. In addition, 56% of respondents felt the service was too expensive, and 33% were frustrated by a lack of ability to set or influence the number of paid duty officers required. Other challenges cited include the requirement for full payment in advance of event, the inability of organizers to direct actions of paid duty officers, and the perception that the request process is complicated. Only 5% of respondents had no challenges with the current paid duty system.

Some of the suggestions made by event organizers to reduce their costs and improve the overall paid duty system involve alternative service delivery, planning and setting of paid duty requirements, reviewing the cost structure, amending administrative practices, clarifying expectations and providing consistent service. Specific suggestions include reviewing police officer (constable) to supervisor ratios, minimum hours charged for service, decision-making authorities and the use of private security. The suggestions are exclusively within the purview of the TPSB and TPS, and this report recommends that TPSB consider the suggestions made by special event organizers in the development of guidelines for paid duties.

CONCLUSION

City staff, the TPSB and the TPS all have a role in addressing issues related to the current paid duty system. While a number of initiatives related to paid duty services have been

implemented since the Auditor General's report in 2011, additional activities are taking place which may result in the reduction of costs and improvement of the current paid duty service delivery model. This report recommends actions to further these objectives.

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SIGNATURE

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ATTACHMENTS

Attachment A: Special Event and BIA Users of Paid Duty Survey Results