



STAFF REPORT ACTION REQUIRED

Basketball and Hockey Nets on the Public Right of Way

Date:	May 26, 2016
To:	Public Works and Infrastructure Committee
From:	General Manager, Transportation Services
Wards:	All Wards
Reference Number:	p:/2016/ClusterB/TRA/NorthYork/pw16056

SUMMARY

Transportation Services is responding to a request from the Public Works and Infrastructure Committee to consider the feasibility of allowing basketball nets and hockey nets on the public right of way where no sidewalks are provided. The report will summarize the current by-laws, attempt to explain the reasons they are in place and set forth possible options for removing the prohibition of sports equipment being placed in the right of way.

Options are provided for consideration should City Council choose to remove the prohibition of portable basketball or hockey nets on the boulevard adjacent to a private property (the "boulevard"). City Council would need to approve amendments to the Municipal Code Chapter 743 - Streets and Sidewalks, Use Of to either include portable basketball and hockey nets as a permitted encroachment or to authorize the General Manager, Transportation Services to enter into an encroachment agreement for the placement of a portable basketball or hockey net on the boulevard.

Amending the Municipal Code to remove the prohibition of portable basketball or hockey nets on the public right of way is not supported by Transportation Services, as it encourages children and adults to play on the roadway as it creates obstructions and encroachments which could create a safety hazard for motorists and interfere with required maintenance activities. Playing on the roadway is prohibited for safety and liability reasons.

RECOMMENDATIONS

Transportation Services recommends that the Public Works and Infrastructure Committee:

1. Receive this report for information.

Financial Impact

There will be no financial impact from the adoption of the recommendation in this report.

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

DECISION HISTORY

At its meeting on November 12, 2015 the Public Works and Infrastructure Committee requested the General Manager, Transportation Services, to report on the feasibility of amending Toronto Municipal Code Chapter 743-9, in order to allow for basketball and hockey nets on the public right of way, when there are no sidewalks.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW9.19>

ISSUE BACKGROUND

Legislation has been in place for many years in the City of Toronto, in the former municipalities within the City of Toronto, and in many jurisdictions across Ontario that prohibits both the playing of games within a roadway and the placement of sporting equipment such as basketball nets and hockey nets within the public right of way. It is recognized that these activities do occur, for the most part without incident. Enforcement of these regulations is complaint driven, discretionary, and rarely results in fines.

Periodically, residents and communities have questioned the need for these regulations. Transportation Services has reviewed the legislation, with input from Legal Services, and provide the following comments, which apply regardless of whether a sidewalk is provided or not.

COMMENTS

Relevant Legislation

Under the *City of Toronto Act, 2006*, the City has an obligation to keep its highways in a state of repair that is reasonable in the circumstances. The City of Toronto Municipal Code contains requirements which regulate obstructions and encroachments in the City right of way.

There are two areas within the City of Toronto Municipal Code which relate to the question of basketball and hockey nets within the public right of way. The first deals specifically with the potential placement of the equipment. Municipal Code Chapter 743 Streets and Sidewalks, Use of states the following:

"§ 743-9. Fouling and obstruction streets.¹³

Unless specifically authorized by this Chapter:

A. No person shall obstruct, encumber, damage, foul, or cause or permit the obstructing, encumbering, damaging or fouling of any street, or interfere with the clearing of snow, or install or place any unauthorized encroachment, object, article or thing, on, over, along, across, under, or in a street except as permitted under this chapter or any other City by-law."

A "street" under Chapter 743, Streets and Sidewalks, Use of includes the entire travelled portion of the public right of way (the "roadway") and boulevard area between the property lines with adjacent owners. The boulevard area could be paved or landscaped and could include ditches and culverts, curb and gutters, and/or sidewalks.

Chapter 743 also identifies permitted encroachments and the conditions under which they are permitted. Permitted encroachments generally consist of soft and hard landscaping under a specified height that do not obstruct pedestrian or vehicle sight lines or traffic; do not interfere with City's ability to maintain the street, do not interfere with traffic control devices or existing and future locations of sidewalks, bicycle trails or utilities; and do not extend into the boulevard of a neighbour. Basketball and hockey nets are not currently identified as permitted encroachments, and are therefore prohibited under Chapter 743, Streets and Sidewalks, Use of, on the City right of way.

These provisions aim to ensure that City streets are maintained free of obstructions in order to, amongst other things, minimize City liability for those areas.

Enforcement of unauthorized encroachments on the public right of way is the responsibility of Transportation Services. Transportation Services generally only enforces the presence of unauthorized encroachments such as basketball or hockey nets when they are causing a hazard, or as a result of a complaint.

The second relevant section within the City of Toronto Municipal Code is Chapter 950 Traffic and Parking § 950-300. *Pedestrians' rights and duties* which deals specifically with the playing of basketball or hockey within the roadway as follows:

"D. No person shall play or take part in any game or sport upon a roadway and, where there are sidewalks, no person upon roller-skates, in-line skates or a skateboard, or riding in or by means of any coaster, scooter, toy vehicle, toboggan, sleigh or similar device, shall go upon a roadway except for the purpose of crossing the road, and, when so crossing, such person shall have the rights and be subject to the obligations of a pedestrian."

This regulation provides, amongst other things, protection to the City from liability and recognizes the potential risk associated with playing or taking part in a game or sport on the roadway which is intended for the safe passage of vehicles and pedestrians.

Enforcement of this regulation is the responsibility of the Toronto Police Services. Enforcement is discretionary and generally driven by complaints. Normally a warning is sufficient to deter the activity in a problematic location. Rarely is a charge laid that would lead to payment of a fine.

Safety and Liability Concerns

When these nets are placed on the travelled portion of the roadway there is the potential for them to be a safety hazard for motorists and cyclists, particularly at night, and also to obstruct traffic and parking of vehicles. Placement of this equipment on the roadway itself also interferes with routine maintenance activities such as street sweeping and snowploughing. Placement of basketball or hockey nets on the boulevard may be of lesser concern but they could also result in visibility obstructions for motorists and pedestrians and could interfere with access to utilities for maintenance and repair. Each of these risks could open the City up to liability, and may run counter to the City's obligation to keep its highways in a state of repair that is reasonable in the circumstances.

The longstanding prohibition of basketball or hockey nets on the City right of way minimizes the risk of damage occurring as a result of unauthorized encroachments and/or obstructions and ensures the City complies with its obligation under the *City of Toronto Act, 2006* to keep its highways in a state of repair that is reasonable in the circumstances.

The current longstanding prohibition of playing a game or sport on a public roadway recognizes the potential risk and inherent dangers associated with playing a game or sport on a roadway, and provides a mechanism under which such activity can be curtailed through enforcement where deemed necessary. Prohibiting these activities on a public roadway provides protection to the City from liability, and minimizes the risk of damage occurring to private property.

Given the City's prohibition of playing sports on City streets, permitting the placement of equipment in a location enabling such behaviour creates an inconsistency in the Municipal Code. If the City were to permit, by by-law, the placement of basketball or hockey nets within the public right of way, the City could be viewed as enabling the playing of games within the roadway, or accepting the presence of objects that could by their location become a safety hazard, and therefore opening itself up to liability in the event of a collision.

Enforcement

Generally, basketball nets and hockey nets are portable objects. Hockey nets can be lifted or dragged to their desired location and basketball nets usually have wheels and a base that can be filled with water or sand that allows them to be moved.

As a portable object, a basketball or hockey net does not normally become an obstruction or an encroachment unless it is left on the roadway or the boulevard unattended. If residents put away the nets on their private property when they are finished with them, the nets would not be considered an obstruction or encroachment and potentially subject to enforcement under Chapter 743, Streets and Sidewalks, Use of.

If a basketball or hockey net on the public right of way is the subject of a complaint, is affixed permanently to the boulevard, or is left on the roadway or boulevard and potentially causing a safety hazard, or obstructing traffic or City maintenance of the roadway, Transportation Services staff may elect to remove the item in accordance with Chapter 743 and its obligation to keep City highways in a state of repair that is reasonable in the circumstances. Normally, a Transportation Standards Officer will knock on the door of the property owner and ask that it be removed or moved back on to private property. If there is no answer or if the property owner refuses, a "Notice of Violation" will be left at the address which advises of the unauthorized encroachment on the right of way, requests that the equipment be removed within 14 days, and provides the name and contact information of the Officer. A follow-up inspection is then done by the Officer and, if the equipment has not been removed, arrangements will be made for removal by Transportation Services and all costs pertaining to removal and storage will be charged back to the property owner.

Other Jurisdictions

Transportation Services staff have reviewed the by-laws in place in other municipalities in the Greater Toronto Area and in Ontario for both the placement of basketball and hockey nets on the public right of way and also for the playing of games in the roadway. Municipalities contacted and reviewed included:

- Barrie
- Belleville
- Brampton
- Guelph
- Hamilton
- Kingston
- Kitchener
- London
- Markham
- Mississauga
- North Bay
- Oakville
- Ottawa
- Peterborough
- Sarnia
- Sault Ste. Marie
- Sudbury
- Vaughan
- Waterloo
- Windsor

Although the specific regulations differed, none of the municipalities contacted allowed the placement of basketball or hockey nets on the public right of way. All of the municipalities contacted prohibited the playing of games within the roadway.

The sole variation occurs in the City of Kingston where there is an exception to their by-law in the form of a Street Hockey Policy and Code of Conduct which allows the playing

of street hockey on a Local Street during daylight hours when there is good visibility. All players of street hockey must comply with the code of conduct and be prepared to assume the risk and free the city of any liability.

Transportation Services does not recommend the Kingston model where a specific game/sport or classification/design of roadway is made exempt from the prohibition. Doing so suggests that allowing the playing of a specific game/sport and/or playing on a specific classification/design of road is less dangerous than another. This is not necessarily the case and staff do not consider this to be a suitable option.

Further, it is noted that the assumption of risk clause invoked by Kingston's Code of Conduct is not a written waiver of release signed by the person participating in the game of street hockey. As such, it should not be assumed that the person is aware of the Code of Conduct or the Assumption of Risk clause and, therefore, it is unlikely to have legal status absolving the city of responsibility.

Options

Based on legal advice and practices in other jurisdictions, staff have identified three options regarding this issue:

1. Do nothing and maintain the status quo.
2. Direct that basketball and hockey nets be defined as a "permitted encroachment" under Chapter 743, Streets and Sidewalks, Use of.
3. Direct that the General Manager, Transportation Services, be authorized to enter into an encroachment agreement with the adjacent property owner to permit the placement of a portable basketball or hockey net in the public right of way.

Status quo

It is recognized that street hockey, basketball, and other sports activities do occur on public roadways, generally without incident, and nets for these activities are often placed on the roadway or boulevard adjacent to private property. Enforcement of the by-laws that prohibit these activities is done only when a safety hazard has been identified, the equipment is obstructing maintenance activities, or complaints are received. Should these encroachments be permitted or the playing of games in the roadway be allowed, the City no longer has the ability to enforce the by-law when placed in a dangerous position.

Notwithstanding the safety and liability concerns, staff have reviewed the current regulations to determine what changes could be made should City Council deem it in the best interests of the City to accommodate this request.

Permitted encroachment

A portable basketball or hockey net could be included in Municipal Code Chapter 743 Streets and Sidewalks, Use Of as a permitted encroachment within the boulevard. This would not include placement of nets within the travelled portion of the roadway. The nets would need to be defined and be subject to the same conditions as other permitted encroachments as follows:

1. It does not obstruct pedestrian and vehicle sight lines;
2. It does not obstruct driveways, impede or pose a hazard or potential hazard to pedestrian or vehicle traffic;
3. It does not interfere with the City's ability to maintain the street in a state of good repair or to keep it free of litter, snow and ice;
4. It does not interfere with traffic control devices or the existing and future location and maintenance of sidewalks, bicycle trails or utilities;
5. It does not extend into the boulevard area fronting any neighbouring property when the common lot line is projected perpendicular to the road; and
6. Any other criteria considered appropriate by the General Manager.

These provisions would also be subject to the same limitations on placement as other permitted encroachments. However, an exemption would need to be approved to remove the prohibition of portable basketball or hockey nets within three metres of the traveled portion of any road without curbs that has a posted speed limit of 60 kilometres per hour or less. Portable basketball or hockey nets would also need to be exempted from the requirement to first obtain appropriate locate information for the public and private utilities, services, equipment or facilities situated in the street where they will be placed.

As a permitted encroachment, the basketball net or hockey net would no longer be prohibited on the boulevard, but would continue to be prohibited on the roadway and the sidewalk. The adjacent property owner would be responsible for maintaining it in a state of good repair, and removing it if required for City maintenance.

There would be no costs incurred by the property owner, or the City, to implement this option.

Encroachment agreements

Alternatively, City Council could authorize the General Manager to enter into agreements with adjacent property owners allowing encroachments for the purpose of placing a portable basketball or hockey net in the public right of way on a case-by-case basis. Such an agreement would be subject to the payment of fees as per Chapter 441, Fees and Charges, and similar conditions to those that apply to a permitted encroachment, with additional requirements for the provision of proof of insurance.

With this option, each individual property owner would need to apply for permission to place a portable net for hockey or basketball on the boulevard adjacent to their home. The current fee to apply for an encroachment is \$512.47. The application would be reviewed by Transportation Services staff to ensure that it would not obstruct pedestrians or traffic or interfere with the provision of regular maintenance. This process would be onerous for the property owner and would have significant impacts on the available staff resources within Transportation Services.

Recommended Position

Transportation Services believes that the “Status Quo” option represents the best balance of competing needs. Recognizing that street hockey, basketball, and other sports activities do occur on public roadways, there are legitimate safety and liability concerns with permitting this activity.

Retaining the existing regulations allows Transportation Services and Toronto Police Services to undertake enforcement when these activities are causing a hazard, or as a result of a complaint. Enforcement of these regulations should remain complaint driven and discretionary.

Adoption of either the “Permitted encroachment” or “Encroachment agreement” option would remove much of the City’s current ability to effectively manage these situations when complaint, safety or liability situations do occur.

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