



STAFF REPORT INFORMATION ONLY

Playing of Ball Sports on Residential Streets In Toronto

Date:	April 5, 2011
To:	Public Works and Infrastructure Committee
From:	Acting General Manager, Transportation Services
Wards:	All Wards
Reference Number:	PW2011105te.top

SUMMARY

This report provides the Public Works and Infrastructure Committee with information on the safety aspects, risk assessment, and potential liability to the City of Toronto of no longer prohibiting the playing or taking part in any game or sport on a roadway.

There is some potential for increased public risk and liability to the City of no longer prohibiting the playing or taking part in any game or sport on the roadway. Despite the current by-law prohibitions against the playing or taking part in any games or sports upon the roadway, these activities do occur, for the most part without incident. Enforcement of the current prohibition is complaint driven, discretionary, and rarely applied to the extent that a fine is issued. The current longstanding prohibition, which is common in many jurisdictions, provides 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 intended for the passage of motor vehicles. This, coupled with the discretionary enforcement practice, suggests there is nothing inherently wrong with the way this issue is currently dealt with in Toronto at the present time.

Financial Impact

There is no direct financial impact associated with Council either maintaining or rescinding in its entirety the regulation prohibiting a person from playing or taking part in any game or sport upon a roadway.

DECISION HISTORY

The Public Works and Infrastructure Committee at its meeting of June 15, 2010 in considering a communication dated May 10, 2010, from the Toronto Pedestrian Committee entitled, "Street Hockey" (Item PW34.15), requested the General Manager, Transportation Services to report on options for accommodating the playing of ball sports on residential streets in Toronto.

On a related issue, City Council at its meeting of March 1, 2 and 3, 2004 received for information a report (January 21, 2004, Clause 20(o) of Works Committee Report No. 2) from the Commissioner of Works and Emergency Services advising that the placement of portable basketball nets, or any other gaming or sporting device, on public roadways should not be explicitly mandated since the playing of games/sports on the public roadway is not acceptable from a safety and public liability point of view, without appropriate mitigating measures such as a temporary road closure for such purposes being implemented.

COMMENTS

Regulatory Perspective:

Regulations which prohibit playing or taking part in any game or sport on any public roadway or laneway in all areas of Toronto have been contained in by-laws for decades. The prohibition was put in place to recognize that the intent of these public thoroughfares (by definition, "public highways") is for the safe passage of both vehicular and pedestrian traffic.

Since the current prohibition applies to all public roads/lanes in Toronto, the posting of specific signs to give effect thereto or enable enforcement of the prohibition is not required. However, Transportation Services has over the years posted signs indicating "Ball and Hockey Playing Prohibited" at locations where:

- staff has been requested by members of Council to post such signs;
- on streets where staff has received complaints from residents about excessive noise and/or damage occurring to private property resulting from persons playing games/sports on the roadway; or
- it has been determined through investigation that the horizontal or vertical alignment of a roadway greatly reduces sight lines between motorists and persons playing on the roadway.

Other Jurisdictions

The current attention to this matter in Toronto partly stems from action taken by the City of Kingston to allow street hockey on certain roads under its jurisdiction.

It cannot be said for certain that all municipalities in Ontario have specifically prohibited within the text of their traffic/streets by-laws the playing of games or sports on roadways

under their jurisdiction. However, staff has confirmed that the surrounding GTA municipalities of Oakville, Burlington, Mississauga, Milton, and Pickering all have such prohibitions in their municipal by-laws.

The City of Kingston is the only Ontario municipality that staff are aware of that has specifically amended its by-law regulating the use of City streets to allow street hockey to take place. More particularly, Kingston's by-law provides that, except pursuant to its Street Hockey Policy and Code of Conduct, no person shall, among other things, play any game or sport on a highway. The Street Hockey Policy and Code of Conduct sets out, among other things, that street hockey may take place on a local street during daylight hours where there is good visibility but not before 9 a.m. or after 8 p.m. and provides that participants in street hockey, and parents or guardians who allow their children to participate in street hockey, assume all risks related to the activity. Of note, only street hockey has been allowed. The playing of any other game or sport on the roadway is still prohibited in Kingston.

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.

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. As it is doubtful that such a Code would provide much legal protection to the City in the event of a claim, the Toronto City Solicitor does not recommend this approach as an option.

Issues and Considerations in Toronto:

This report has not categorized persons playing games or sports on the roadway by age but it is fair to say that participants can range in age from young children to adults. To be clear, the basic reason from an operational standpoint for prohibiting the playing of games or sports on a roadway is safety, particularly the safety of children, who in the absence of adult supervision can become distracted by the game they are playing and less aware of their surroundings and potential dangers.

In determining if action should be taken to eliminate or amend the current prohibition in Toronto, several issues must be considered, which are addressed below.

Suburban vs. Central Environment:

Toronto's suburban neighbourhoods are often different in character and design from the neighbourhoods in the central area of the City. Local/residential streets in the central area of the city generally:

- are narrower in width than similarly classified suburban streets;
- exhibit a grid pattern alignment, extending for several blocks often in excess of 400 metres in length and crossing intersecting major arterial roads;
- do not give the "subdivision" feel with cul-de-sacs, serpentine roads, and less inlet/outlet roads connecting with adjacent arterial roads;
- can carry higher daily traffic volumes, some of which can be commuter-type traffic that is not locally generated; and
- experience much higher demand for on-street parking by residents, thereby reducing the available road surface and increasing risk of damage to vehicles.

These issues in combination have generated many complaints in the central area of the City about children and young adults playing games and sports on the roadway. Some complaints relate to increased noise levels resulting from the amplification of voices and game-related sounds caused by homes having minimal setback from the edge of the road with narrow separation between adjacent buildings. However, the vast majority of complaints relate to property damage, usually in the form of dents, broken mirrors, and other cosmetic damage occurring to parked cars.

It is unclear how such complaints or issues could be dealt with in the absence of a by-law prohibition.

Road Classification:

It has been suggested by the Toronto Pedestrian Committee that the playing of a game or sport could be allowed under certain circumstances. The general suggestion is that local streets, cul-de-sacs, or dead-end streets could be considered.

Toronto defines its streets as local, collector, and minor/major arterial roads under the Council-adopted Toronto Road Classification System. Traffic volume on local streets in the City ranges from less than 100 vehicles to over 3000 vehicles a day. A cul-de-sac is a design of road, not a classification of road. They are generally characterized as short streets with a turning circle at the dead end. For the most part they are classified as local streets, are a more prominent feature in suburban residential neighbourhoods, and generally assumed to carry a low traffic volume. However, traffic volume is dictated by adjacent land use. Some cul-de-sacs provide access to high density apartment complexes which generate traffic volumes in excess of 2000 vehicles a day. Dead-end streets are similar to cul-de-sacs but the length of the street might be longer and frequently there is not a turn-around area constructed at the end of the street. Again, traffic volume is dictated by adjacent land use and the traffic volume can be significant.

In the Toronto environment, providing a blanket exemption to no longer prohibit a game or sport from being played on a roadway based on the road's classification or constructed appearance (local road/cul-de-sac) is problematic.

Alternate Areas:

Of note, when discussing community safety concerns at public meetings, parents who support allowing their children to play on the roadway often acknowledge that the problem is not a lack of alternate areas in which to play. The issue for these parents is the assurance of being able to see the child playing near their home rather than have the child out of sight at a park or school grounds several blocks away.

While public spaces such as parks/community recreation centres and schools provide a safer environment in which to play any game or sport from a traffic perspective, these areas are subject to stipulations of the *Occupiers' Liability Act*. Parks for example are subject to this Act, which places the City as "occupier" with a duty to take reasonable care to see that all people entering the park are kept reasonably safe. In this regard, signs are posted in some parks restricting the type of sporting activity that can take place.

Selective Exemptions:

There are polarized opinions on the issue of allowing persons to play games or sports on a roadway. Given the prominence of hockey in Canadian society, it is thought by some people that our children should by right be allowed to play street hockey. Seldom is any other game or sport mentioned.

However, if the approach is taken to exempt only street hockey, this could be considered unfair. It is unclear what makes street hockey different from other games/sports and why they would not also be allowed.

Options and Evaluation

Staff provides below two options regarding this issue:

1. Do nothing and maintain the status quo; or
2. Amend the appropriate by-laws to no longer prohibit the playing or taking part in games or sports upon roadways.

Option 1, maintaining the current regulation prohibiting the playing or taking part in any game or sport on the roadway, recognizes the fact that there is a potential danger to both motorists and participants associated with playing a game or sport on a roadway. For the most part, children/adults choose to play on streets where it is relatively safe to do so. Games or sports being played on the roadway generally go on without incident. The determination regarding safety and the responsibility to ensure same is, however, taken on by the individual and does not shift to the City in these situations. Therefore, the current prohibition is technically sound and operationally justified.

Enforcement of the current prohibition against the playing or taking part in any game or sport upon a roadway is the responsibility of the Toronto Police Service. Any such enforcement is discretionary and is generally complaint driven. The transient and sporadic nature of the activity makes enforcement difficult and given the responsibilities

of a police officer, this matter is not given a high priority. Further, applying a charge that could result in a fine being paid by the participant in the game/sport seldom occurs. Usually, a warning (particularly in the case of children) is sufficient to deter the activity in a problematic location. However, the by-law prohibition does allow for enforcement to occur, if necessary.

Further, retaining the current prohibition provides the City with a measure of protection from potential liability and risk associated with individuals playing a game or sport on the roadway. Special street events that involve the playing of street hockey or other games on a public roadway can still go ahead as they do now with the approval of a temporary road closure permit.

As such, continuation of the current prohibition and of enforcement on a complaint basis and/or for safety reasons is recommended.

However, in the event Council deems that the applicable by-laws be amended to no longer prohibit the playing or taking part in games or sports upon roadways (Option 2), the Acting General Manager, Transportation Services, and the City Solicitor would have to report on a process for amendments which will achieve this while minimizing any potential increase in liability to the City.

The City Solicitor has been consulted in the preparation of this report.

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