

Appendix 1

Description of Draft Articles- Chapter 743, Use of Streets and Sidewalks

These proposed amendments to Municipal Code Chapter 743 are separated into specific articles, each addressing a distinct right-of-way activity. What follows is a brief summary of each of these articles.

Article 1 - Terminology

This article provides definitions for common terms used in the proposed amendments, replacing a number of existing definitions found in the by-laws and policies of the former municipalities. The definitions are consistent with the current organizational structure of the amalgamated City of Toronto.

Article II - Prohibited and Regulated Activities

This article creates a regulatory regime for prohibited and permitted activities within public highways, and includes standardised regulations governing specified permitted activities such as commercial boulevard parking, temporary street occupations, temporary decorative lighting, canopies/awnings and banner signs. Activities not allowed in the public road allowance are identified at the beginning of the article. These prohibitions are similar to the prohibitions existing in the former municipalities.

As an example of this approach, the stockpiling of construction materials in a boulevard adjoining a construction site is prohibited under § 743-9D. But staff could allow this material to remain, provided that the applicant applies for a permit and complies with the requirements specified in § 743-20 “Temporary Street Occupations.” This subsection authorises the General Manager to issue a permit allowing a temporary street occupation, subject to any permit conditions that the General Manager or City Solicitor consider appropriate.

The proposed regulations for temporary street occupations, canopies/awnings, banners and temporary decorative lighting and decorations are updates to existing legislation from the former City of Toronto and the Municipality of Metropolitan Toronto. These regulations will describe the application process, specifying the conditions under which these encroachments will be permitted.

The proposed regulations for commercial and industrial boulevard parking gives staff authority to approve applications that comply with specified conditions. These amendments are much more comprehensive than the existing by-laws, requiring:

- submission of detailed landscaping plans (§ 743-17A(4));

- that to prohibit an applicant subsequently leasing boulevard stalls to other unauthorised persons, the use of boulevard parking stalls is limited to their employees and customers (§ 743-17B(7));
- that if considered appropriate, the applicant shall register the boulevard parking agreement on-title to the property (§ 743-17B(8)).
- a prohibition on direct vehicle access from boulevard parking stalls to arterial streets, with the stalls aligned parallel to the road whenever possible both to reduce traffic conflicts, improve safety and maximise boulevard landscaping (§ 743-17E); and,
- confirmation that introducing commercial/industrial boulevard parking will not contravene existing zoning regulations (§ 743-17I).

Provisions are also included which prohibit dwelling or camping out on a road allowance, the setting of fires and tracking of mud and debris. The former is included in consultation with the Shelter Support and Housing Administration Division.

Staff will be required to circulate applications to the affected Ward Councillor for comment. If the application abuts a residential area, the Ward Councillor may request that, before approving the application, staff conduct a poll of the adjoining residential neighbourhood to determine community support for the proposal. This poll must comply with the requirements of Chapter 190 “Polling and Notification.” Staff will refuse any application that does not satisfy the polling requirements of Chapter 190.

Regulations concerning the placement of memorials within public highways are also included in Article II under § 743-21 “Memorials in Streets.” The criteria in this section are consistent with the policy on roadside memorials adopted by City Council in 2003, but including it in the Toronto Municipal Code makes these regulations more accessible for both staff and the public.

Article VIII - Street Work

Under these proposed amendments, the definition of street work:

“ . . . includes any excavating in streets, and installing, repairing, replacing, extending or operating and maintaining any equipment, structure or device located on, over, along, across, under, or in streets.”

Excavating in a street is defined as:

“ . . . the breaking, digging up, tearing up, tunnelling, boring, coring, cutting into or removing any portion of the surface or subsurface of the street, including pavement, sidewalk, curbs, gutter or landscaping.”

A temporary street occupation is defined as:

“ . . . the occupation of any portion of a street for social, recreational, community or athletic purposes, or the placing of any barricade, covered pedestrian walkway, construction site fencing, hoarding, machinery, material or other object, hoisting,

or transporting excess loads, or carrying out any street work that does not require excavating in a street.”

This article prohibits anyone from conducting street work, or temporarily occupying a street, unless they obtain consent from the municipality in the form of a permit or other agreement with the City. The only exemption to this requirement is street work done by the Transportation Services Division for the purposes of maintaining its public highways, and street work in a boulevard done by adjoining property owners for the purposes of planting and maintaining ‘soft’ landscaping such as sod, bushes and gardens.

The article establishes the terms and conditions under which the General Manager may authorise a permit for a temporary street occupation or to excavate in a street. In these respects, the proposed amendments that Article VIII describes are not dissimilar to the assortment of existing municipal by-laws and the existing formal and informal ‘best’ practises often used by staff; however, they have been made far clearer by including the following:

- requiring, if requested by the General Manager, information confirming the location of above- and below-grade utilities and services, with written consent from the utility or service company indicating that they do not object to the proposed street work (§ 743-52F(6));
- requiring, if requested by the General Manager for the purposes of minimising excavation, installation of utilities in ‘joint use’ facilities with other utilities and services (§ 743-52H);
- requiring proof of insurance in an amount acceptable to the General Manager and Chief Financial Officer (§ 743-53);
- requiring that every applicant submit financial securities sufficient to restore a street to its original pre-construction condition should the applicant default on their obligations (§ 743-54);
- establishing a harmonised process for collecting and returning financial securities taken as a condition to approving street work or required by a development agreement, including a notification procedure to advise property owners that securities taken out by their contractor are ready to be refunded (§ 743-54A and § 743-54D);
- requiring that contractors who are subject to a development agreement warrant their street work for a period of one to two years, depending on the location of the work within the right-of-way (§ 743-54D);
- allowing the City to use financial securities to restore the street should the applicant default on their obligations, and collect any outstanding amounts in a like manner as taxes (§ 743-54C(5) and § 743-54D(4));
- similar to existing legislation (§ 743-4) dealing with Municipal Road Damage Deposits, allowing the City to retain financial securities that remain unclaimed two years after the date the securities were paid (§ 743-54E);
- allowing the City to refuse any incomplete permit, any permit submitted using false or misleading information, any permit where fees and securities have not been paid, and any permit requested by persons who have violated conditions to approval on previous permits (§ 743-57);
- applying a formal moratorium to permits requested on recently constructed or resurfaced streets (§ 743-58);

- specifying uniform standards to ensure that work sites and other construction-related temporary street occupations are maintained in a safe condition (§ 743-59);
- establishing standard conditions that apply to every street work permit, regardless of whether these conditions actually appear on the permit (Schedule A); and,
- requiring that the permit holder restore the street to its original condition as it existed before they started the work (§ 743-60).

With Article VIII we achieve consistent regulations governing the conditions under which the City will allow people to work in our streets. In comparison to the current variety of municipal by-laws and sometimes vague and conflicting operating practises, these proposed regulations will be easier for staff to administer, and much easier for residents and business owners to comprehend.

Article X – Encroachments in Streets

Arguably one of the most misinterpreted phrases in municipal administration, an “encroachment,” as it relates to public road allowance, is generally taken to mean anything privately installed or planted within the limits of a public highway.

As enacted by the former municipalities, existing encroachment regulations treat and define the subject differently. Former municipalities such as Toronto and North York had specific by-laws regulating encroachments, while others such as Etobicoke and York dealt with encroachments through Council-approved policies. Whether a policy or a by-law, none treat the issue consistently. An “encroachment” allowed “as of right” in one former municipality may require Community Council approval, payment of annual fees and a legal agreement in another.

For the purposes of this proposed Article, an “encroachment” is defined as:

“ . . . Any device, equipment, object, structure or vegetation that is located on, over, along, across, under or in a street, or any portion thereof, but excluding any vegetation planted or any device, equipment, object, or structure installed and maintained by the City.”

Put another way, unless the City installed or planted the encroachment, then under Article II the encroachment is unauthorized and the property owner is required to remove it. But § 743-90A of Article X provides specific exemptions to this prohibition, specifically:

- “soft” landscaping (such as sod and gardens);
- walkways less than 1.5m wide;
- fences and retaining walls less than 0.90m in height; and,
- stairs leading to single-family dwellings,

that are allowed within the public road allowance without the need for an encroachment agreement, provided that the encroachment:

- does not interfere with sight lines;

- does not obstruct driveways or pose a hazard to pedestrian/vehicle traffic;
- does not obstruct the City’s ability to maintain the street in a state of good repair and to keep it clear of snow and ice;
- does not interfere with traffic control devices, existing or future sidewalks, bicycle trails or utilities;
- does not extend into the boulevard area of an adjoining property; and,
- complies with the minimum setback requirements from the travelled portion of the road and sidewalk that § 743-90E specifies.

Property owners proposing to install a permitted encroachment within the public road allowance fronting their properties, with the exception of ‘soft’ landscaping and gardens that are permitted “as of right,” are required to obtain a permit from the General Manager, confirm the location of all existing utilities before they start their street work and maintain the permitted encroachment in a state of good repair.

Persons installing the permitted encroachments described in § 743-90A will not have to enter into an encroachment agreement or pay a fee for the encroachment, nor is a fee required for the permit. By waiving these fees we can improve public safety and provide better customer service that achieves compliance with the regulations by encouraging the public to come forward and seek our advice before building their encroachment. This is in marked contrast to the existing regulations in all of the former municipalities that requires permits and payment of applicable fees for encroachments or any other construction activity that “breaks open” the surface of a road or boulevard.

This Article specifies that the City will not be responsible for repairing or replacing an encroachment damaged due to municipal maintenance activities such as snow clearing or street repairs, that property owners must maintain their encroachments in a state of good repair, and that the City can modify or remove the encroachment subject to the notification process described in Article XVIII.

Business Improvement Areas (BIA) defined under the *City of Toronto Act, 2006*, are allowed to place encroachments such as street furniture, decorative lighting, decorations, planter boxes, identification signage, historical markers, public art and ‘soft’ landscaping in public road allowances, provided that these encroachments are maintained by the BIA in a state of good repair. Again, to encourage compliance as well as expediting and streamlining the application process, BIA’s will be required to obtain the necessary permits but are exempt from permit and encroachment fees.

With the exception of the encroachments described above, all other encroachments require municipal approval. To advance the approval process, and to reduce the administrative burden on Council and improve customer service, Article X gives staff delegated authority to enter into agreements for a variety of encroachments provided that the proposed encroachment complies with the conditions and criteria specified in § 743-93 specifies. The types of encroachments dealt with through delegated authority are typically those most likely to be encountered on a daily basis, such as fences and building projections. Any proposed encroachment that does not comply with the specifications in § 743-93 will require Community Council approval.

Recognizing that there are hundreds of existing encroachments approved under the existing regulatory regime inherited from the former municipalities, Article X provides a “grandparent” clause (§ 743-94) exempting these authorized encroachments from the new regulations, provided that the existing encroachment complies with the terms and conditions of its original approval. The “grandparenting” expires when the property is subject to an application for a plan of subdivision, rezoning, official plan amendment, site plan approval, minor variance or consent (property severance) initiated by property owner, at which time the encroachments must be removed or brought into compliance with the new standards.

Article XI – Maintaining Boulevards

Municipalities establish public highways to ensure the safe and efficient movement of transit, vehicle and pedestrian traffic. The untraveled portion of a public highway, typically referred to as the “boulevard,” is an important municipal resource providing a number of very important functions. It acts as a safety separation between vehicles and pedestrians while maintaining an area that provides snow storage and accommodates sidewalks, above- and below-grade utilities, traffic signs and other control devices. It also reduces crash potential by providing an area between the road and adjoining properties that can be kept free of visual obstructions that restrict a driver’s sight lines when entering or exiting abutting properties and intersections.

Regulations from the former municipalities identify a number of obligations regarding boulevard maintenance by property owners. None consistently address the issue; for example, a property owner in former Toronto or York is required to cut the boulevard grass, while property owners/occupants in Scarborough and East York have to maintain their hedges and shrubs, but are not legally required to cut the grass. Residents in former Etobicoke and North York are not required to cut the grass on municipal boulevards, but in North York, commercial and apartment property owners must cut the boulevard grass and remove litter.

Since 2006, properties with front yard parking pads in the City have been required to maintain the adjoining municipal boulevard. This includes cutting the grass, removing litter, pruning hedges/shrubs and maintaining encroachments in a state of good repair.

Clearly, there is no consistent regulation dealing with the issue of boulevard maintenance, particularly the ‘soft’ landscaping prevalent in most areas of the City, nor are maintenance obligations clearly stated for either the property owner or the municipality. As a general practise, the City does not maintain ‘soft’ landscaping unless a property is in an obvious state of disrepair, and even then, maintenance, particularly grass cutting, is infrequent.

Fortunately, most property owners appreciate that it is simply not realistic, from either a financial or a logistical perspective, for the municipality to provide a level of boulevard maintenance appropriate to the standard that most owners would prefer. As a result, the overwhelming majority of property owners tacitly assume this responsibility, recognizing that maintaining their municipal boulevards has a tangible benefit not only to their property values, but to their communities as well.

Article XI recognizes that the City needs to clearly define its obligations with respect to boulevard maintenance, that responsible property owners play a key role in sustaining a clean and attractive streetscape, both from an environmental and financial perspective, and that there are property owners, to the detriment of their neighbourhoods, who neglect to maintain either their own lots or the adjoining boulevard.

Article XI clearly defines the relationship between the property owner and the City, requiring that the property owner (§ 743-100):

- maintain boulevard vegetation in a state of healthy and vigorous growth, with sod trimmed to a height not exceeding 20cm, with hedges and shrubs properly maintained so that they do not obstruct sidewalks, fire hydrants or roadways;
- maintain any permitted encroachments as described in Article X;
- maintain driveway and parking areas in a state of good repair; and,
- maintain the boulevard free of litter, leaves, lawn/tree trimmings and noxious weeds;
- ensure that driver and pedestrian sight lines are not obstructed by encroachments or vegetation.

With respect to boulevard maintenance, property owners are not required to maintain (§ 743-101):

- vegetation or streetscaping located in centre medians and traffic islands;
- municipal sidewalks or retaining walls, fences or noise attenuation walls built by the City;
- public transit stops or transit shelters;
- street trees, hedges, shrubs or maintained natural gardens planted by the City;
- damage to boulevards resulting from motor vehicle crashes; and,
- locations where the property owner cannot realistically be expected to maintain the boulevard due to grades or other constraints.

We emphasize that the boulevard maintenance requirements that § 743-100 specifies have applied to properties with front yard parking pads since 2006, when these requirements were introduced in Chapter 918 “Parking on Residential Front Yards and Boulevards” (§ 918-23) of the City of Toronto Municipal Code.

Technically, current municipal by-laws require that a property owner obtain a permit from the municipality every time they “excavate” in a boulevard. Under these existing ordinances, simply digging into boulevard soil to plant a single flower requires a permit as well as the payment of associated fees. In exchange for maintaining boulevard vegetation, property owners will be exempt from any requirement to obtain permits, pay fees or obtain encroachment agreements, to plant or maintain soft landscaping (§ 743-51). As indicated previously, persons constructing the permitted encroachments that § 743-90 specifies still require municipal approval, but there is no fee associated with obtaining a permit from the City, nor a requirement for an encroachment agreement.

For enforcement purposes, Article XI specifies that after providing written notice, the General Manager can (§ 743-102):

- remove or modify any encroachment, driveway, vegetation or landscaping to accommodate municipal street work;
- remove or modify any additions or alterations to the boulevard; and,
- remove or modify any encroachment, driveway, parking area or vegetation that negatively affects public safety or that may damage a street or interfere with boulevard improvements and future utility locations.

Should the property owner fail to comply with the notice, the General Manager can, at the property owner's expense, complete the required work described in the notice.

Article XIV - Sidewalks

Uniform regulations prohibiting vehicles on sidewalks are contained in Article III of Chapter 950 of the Uniform Traffic Code adopted by City Council on July 20-22, 2004; however, prohibiting pack animals on sidewalks is currently not part of the Code and is included in these amendments under Article XIV, § 743-150.

Article XIV requires that property owners maintain public and private sidewalks abutting a street free of vegetation, dirt, dust, litter and any other encumbrances that interfere with the safe and convenient passage of pedestrians (§ 743-151A). Owners of institutional, industrial, commercial and multi-unit residential apartment properties must not only keep both public and private sidewalks fronting their public road frontages free of encumbrances, but must ensure that any land situated between the building and the street line that the public uses as a sidewalk or walkway is kept in a state of good repair (§ 743-151B).

Article XIV gives the General Manager authority to clear, restore or repair any private sidewalk fronting a street if the property owner does not comply with the General Manager's notice to undertake the work requested. The property owner is required to complete the work at no expense to the City.

Article XV – Constructing and Altering Walkways and Driveways

This article establishes the process for constructing, reconstructing (including repaving) and altering a walkway or driveway that connects to a public road, stating specifically that:

- all vehicle access driveways must provide adequate sight distance to ensure safe operation (§ 743-161A);
- all driveways shall be designed and located to minimize the impact on pedestrian and vehicle traffic, providing the sight distances required by the General Manager (§ 743-161B);
- driveway access to any street with a controlled access designation, such as the F.G. Gardiner Expressway and the Don Valley Parkway, is prohibited (§ 743-161J);
- to preserve public boulevards and protect for the installation of future sidewalks and utilities, the negative grade of any depressed driveway must be maintained entirely on private property (§ 743-161D) ;

- truck loading facilities requiring access to arterial streets must be designed to allow the vehicle to enter and exit the loading area “cab forward” (§ 743-161E);
- to avoid disputes between neighbours, driveway width, including any corner radius or ‘flaring,’ must be contained within the applicant’s projected property limits (§ 743-161G);
- no one shall damage or remove a tree to construct a driveway without authorization from the Parks, Forestry and Recreation Services (§ 743-161H);
- the property owner must obtain a permit before they construct, repave, reconstruct or alter a driveway or walkway, posting any financial securities that the General Manager deems appropriate to ensure that the work satisfies municipal requirements (§ 743-160A);
- driveways are only permitted for the purpose of providing vehicle access to an authorized parking area, internal driveway system or boulevard parking stall approved by the City, and cannot exceed the minimum width required by any applicable by-law (§ 743-160B);
- the property owners shall remove any driveway and walkway that is no longer needed as a result of constructing a new driveway or walkway, and the boulevard shall be restored (§ 743-160C);
- driveways and walkways that are not constructed to the requirements that the General Manager specifies can be repaired or reconstructed to the satisfaction of the General Manager, at the property owner’s expense, and the General Manager has the ability to recover any outstanding costs should the amount of the work exceed the submitted security (§ 743-160K, L);

Article XV does not apply to any existing depressed driveway, direct access loading dock, driveways encroaching into their neighbours projected property limits, or driveways situated within the corner radius of two intersecting streets. These facilities are “grandparented,” and can remain provided that they were authorized before passage of the above-noted amendments and must continue to comply with the regulations that were in effect at the time of their original approval. Similar to encroachments, this “grandparenting” will not apply to properties subject to an application for plan of subdivision, rezoning, official plan amendment, site plan approval, minor variance or consent to sever (§ 743-161I).

Article XVIII - Municipal Remedial Action

Article XVIII allows the General Manager to remove or immobilize anything that is placed, stands or parks on, in or near a street contrary to the provisions of Chapter 743 (§ 743-170).

This article establishes the process for giving notice to comply with the provisions of Chapter 743. It specifies a minimum of 14 days to remediate or modify a street to ensure compliance with the General Manager’s requirements. The General Manager also has authority to invoice for any costs owing to the City, and can place these costs on the municipal tax roll (§ 743-171A, B, and C) in the event that these monies are not paid in a timely manner.

The General Manager is not required to give notice to remove any fouling, object, encumbrance, vehicle or obstruction in a street that represents a danger to public health or safety (§ 743-171D).

The General Manager will store any impounded “article” for not less than 60 days, after which time it is subject to disposal. Anything claimed before the expiry period will not be released until the owner pays all costs associated with removing and storing it (§ 743-172A, B).

At present, Transportation Services’ By-law Officers must leave a property when asked to do so by the property owner. This seriously hinders our ability to conduct investigations and repair deficiencies. Article XVIII corrects this by providing Transportation Services staff, By-law Officers in particular, with the authority to enter on private land adjoining a street for the purpose of carrying out an inspection to either determine compliance with Chapter 743, or an order issued by the City or the General Manager (§ 743-173). This authority is similar to the “powers of entry” available to Toronto Water employees as specified in § 681-13.1 of Chapter 681, Sewers, of the Toronto Municipal Code.

Staff must exercise this power at a reasonable time, and are subject to the limitations described by Sections 375-379 of the *City of Toronto Act, 2006*. This “power of entry” does not apply to a dwelling house.

Article XIX - Appeals

Anyone refused a permit or otherwise denied the required authorizations may appeal to the applicable Standing Committee or Community Council within ten working days of receiving the General Manager’s written refusal (§ 743-250A). A non-refundable administration fee of \$748.03 will apply to all appeals, consistent with the current (2011) appeal fee for front yard parking appeals specified in Chapter 918, Parking on Residential Front Yards and Boulevards, of the Toronto Municipal Code.

Before accepting the appeal, the applicant shall pay the fee that Chapter 441 specifies. Once the fee is paid, the General Manager shall prepare a report to the applicable Standing Committee or Community Council describing the circumstances and rationale behind refusing the applicant’s request. The applicable Standing Committee or Community Council reviews the report, hears the applicant’s versions of events, and makes a decision on the matter (§ 743-250B, C and D).

Article XX - Fees and Article XXVII - Administration and Enforcement

Article XX specifies that anyone, with the exception of persons installing permitted encroachments, who works in a street must pay the applicable fee that Chapter 441 specifies (§ 743-251A).

Revenue collected by the General Manager relating to this Chapter is applied to the costs associated with managing and maintaining the City’s public highways (§ 743-251B).

Article XXVII makes it an offence to contravene any provision of Chapter 743, and specifies that the provisions of this Chapter replace any related bylaw of the former municipalities.