



## STAFF REPORT ACTION REQUIRED

### Amendments to Chapter 743, “Use of Streets and Sidewalks,” of the Toronto Municipal Code - Final Report

<b>Date:</b>	October 20, 2011
<b>To:</b>	Public Works and Infrastructure Committee
<b>From:</b>	Gary H. Welsh, General Manager, Transportation Services
<b>Wards:</b>	All Wards
<b>Reference Number:</b>	P:\2011\Cluster B\TRA\GM\pwi11001.row.doc

#### **SUMMARY**

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Transportation Services has completed a public and stakeholder consultation, as directed by Council, to gather feedback on proposed substantial amendments to Municipal Code Chapter 743 (“Use of Streets and Sidewalks”), which in effect form a new “Streets By-law,” to consolidate and simplify the management and administration of a comprehensive range of activities and uses in Toronto’s 5,600 kilometres of public rights-of-way.

The draft amendments and supporting documentation were posted on the City’s website for public review, and staff presented the proposed amendments to representatives of the City’s Business Improvement and Resident Associations, as well as interested Councillors. Public open houses were held in each Community Council district in September, 2011.

The attached by-law represents the results of this consultation. The original draft document presented to Public Works and Infrastructure Committee at its June 23, 2011, meeting has been revised in response to public comment, with the recommended draft by-law presented here for approval.

Significant revisions resulting from the consultation program include: deleting the clause prohibiting camping, dwelling or lodging on a street; increasing the number of permitted encroachments for residents and Business Improvement Associations (BIA); requiring street work permit holders to provide BIAs with 48 hours advance notice before conducting their work; applying a survey and inspection fee to locations that do not comply with an initial notice from a By-law Officer; and, increasing the appeal period from ten working days to fifteen business days.

By working with the public and stakeholders, focusing on prevention by encouraging compliance with municipal regulations, the new provisions will promote efficiencies by reducing reliance on enforcement “after the fact.” Common municipal regulations governing the use of public rights-of-way will now apply City-wide, with application consistent throughout each operating District.

This report is scheduled as a deputation item. Public notice has been given in the manner prescribed by Chapter 162, Notice, Public, of the City of Toronto Municipal Code.

## **RECOMMENDATIONS**

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### **The General Manager, Transportation Services recommends that:**

1. City Council enact the amendments to City of Toronto Municipal Code Chapter 441, Fees and Charges, and Chapter 743, “Streets and Sidewalks, Use of”, generally as set out in Attachment No.1 to this report of the General Manager, Transportation Services, dated October 20, 2011, including the changes to the initial draft as set out in Attachment No. 2 of this report, subject to such technical and stylistic amendments as required by the City Solicitor and the General Manager, Transportation Services;
2. City Council authorize and direct the General Manager, Transportation Services, and the City Solicitor to rescind, at such time as they deem appropriate, the existing provisions in the Code Chapters, policies and by-laws, or relevant sections thereof, of the former municipalities described below, and any other provisions that the General Manager or City Solicitor may identify relating to and that have been superseded or replaced by the new Code Chapter:
  - a. By-law No.111-92 “Boulevard Obstructions” of the former Borough of East York;
  - b. By-law No.23-89 “Boulevard Use Restrictions” of the former Borough of East York;
  - c. By-law No.1976 “Respecting Streets” of the former Borough of East York;
  - d. Chapter 231 “Streets and Sidewalks” of the Municipal Code for the former City of Etobicoke;
  - e. Encroachment Policy for the former City of Etobicoke as adopted by Council for the former City of Etobicoke on September 6, 1994;
  - f. § 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 of By-law No.211-74 “To regulate the use of Metropolitan Roads” of the former Municipality of Metropolitan Toronto;
  - g. By-law No.54-81 “To delegate to the Commissioner of Roads and Traffic authority to permit certain encroachments on Metropolitan Roads” of the former Municipality of Metropolitan Toronto;
  - h. By-law No.21621 “A By-law to prohibit or regulate the obstructing, encumbering, injury or fouling of highways” of the former City of North York;

- i. By-law No.20954 “A By-law to provide for the licensing of boulevards for parking purposes in the Township of North York” of the former City of North York;
- j. Encroachment Policy for the former City of North York as adopted by Council for the former City of North York on April 17, 1996;
- k. By-law No.6567 “Being a by-law to regulate the construction of culverts upon highways under the jurisdiction of the Township of Scarborough” of the former City of Scarborough;
- l. By-law No.7322 “Being a by-law to amend By-law Number 6567” of the former City of Scarborough;
- m. By-law No.13778 “Being a by-law to regulate the erection of hoardings on Municipal Highways or Boulevards and require a permit to do so” of the former City of Scarborough;
- n. By-law No.16402 “Being a by-law to regulate temporary occupation of highways or portions thereof during the construction or repair of any work thereon” of the former City of Scarborough;
- o. By-law No.17117 “Being a by-law concerning the removal of snow from sidewalks” of the former City of Scarborough;
- p. By-law No.17306 “Being a by-law for prohibiting vehicles and conveyances of every description being upon or being used, drawn, hauled or propelled along or upon any sidewalk, pathway, footpath or boulevard” of the former City of Scarborough;
- q. By-law No.20304 “Being a by-law to regulate the crossing of curbs, sidewalks and paved boulevards by vehicles, and the requiring of owners to pay damage deposits upon the issuing of a building permit, pursuant to The Municipal Act, RSO 1980, Chapter 302, Section 315(2)” of the former City of Scarborough;
- r. By-law No.20630 “Being a by-law to lease or license the use of sidewalks and untravelled portions of Metropolitan Toronto and other Municipal Roads in the City” of the former City of Scarborough;
- s. § 3(1), 4, 5 and 6 of By-law No.21208 “Being a by-law to prohibit the obstructing, encumbering, or fouling of highways and the sale by retail in a highway or on a vacant lot adjacent to a highway” of the former City of Scarborough;
- t. By-law No.23729 “Being a by-law to lease or license the use of sidewalks and untravelled portions of Metropolitan Toronto and other Municipal Roads in the City” of the former City of Scarborough;
- u. By-law No.23907 “Being a by-law to lease or license the use of sidewalks and untravelled portions of Metropolitan Toronto and other Municipal Roads in the City” of the former City of Scarborough;
- v. Articles I, II, III, IV, V, VI (§ 313.33.1, § 313-34, § 313-38, § 313-39.1, § 313-39.2, § 313-40, § 313.41, § 313-42, § 313-43) VII, VIII, X, XI (§ 313-74, § 313-75, § 313-76, § 313.78, § 313.77 excluding references to § 313-35, § 313.36 and § 313.37, § 313.79, § 313.81, § 313.82, Schedule A and Schedule D of Chapter 313 “Streets and Sidewalks” of the Municipal Code of the former City of Toronto;

- w. § 803.2.2 of Chapter 803 “Grass and Weeds” of the Municipal Code of the former City of York;
  - x. Chapter 830 “Retaining Walls – Maintenance” of the Municipal Code of the former City of York;
  - y. Articles 2, 3, 4, 5, 6, 7, 9, 13, 15, 16, 17, 18 and Schedules A, B and C of Chapter 1004 “Street” of the Municipal Code for the former City of York;
  - z. Encroachment Policy for the former City of York as adopted by Council for the former City of York on July 8, 1992;
  - aa. By-law No.23907 “Being a by-law to lease or license the use of sidewalks and untravelled portions of Metropolitan Toronto and other Municipal Roads in the City” of the former City of Scarborough;
3. City Council authorize the City Solicitor to amend any City by-laws, policy or Code Chapters, or sections therein, that may contain references to any by-law, policy or Code Chapter, or section therein, that is to be superseded by the proposed amendments to Chapter 743 to eliminate and, where appropriate, correct such references; and
  4. City Council authorize and direct the City Solicitor, in consultation with the General Manager, Transportation Services, to make application to the Senior Regional Justice of the Ontario Court of Justice for set fines with respect to the offences created by the amendments to Chapter 743.

## **Financial Impact**

Fees and resultant revenues from road allowance permitting activities are not affected by the by-law amendments proposed with this report at this time, with one minor exception noted below. These are being reviewed separately within the framework of the User Fee Policy Review, and will be subject to further reporting at a later date.

The only change in fee application being proposed involves applying a survey and inspection fee of \$70.64, intended to offset costs of multiple visits by a By-law Officer in cases where parties are in violation of a provision of the Code and fail to comply with the initial notice.

This report also addresses the existing permit fee for replacing an existing driveway within the road allowance (\$129.45) although no change is recommended at this time.

## **DECISION HISTORY**

City Council, at its meeting of July 12, 2011, adopted Item PW5.4, titled “Amendments to Chapter 743, ‘Use of Streets and Sidewalks,’ of the Toronto Municipal Code - Consultation Plan.”

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW5.4>

In doing so Council directed the Acting General Manager, Transportation Services to initiate a public and stakeholder consultation on proposed amendments to the City's "Streets By-law," and present a recommended draft Streets By-law for consideration and approval, incorporating any necessary adjustments arising from the consultation process.

Council also directed the Acting General Manager, the Chief Building Official, and the Chief Planner and Executive Director, City Planning, and interested Members of Council to consult with representatives of the development industry with the goal of developing Municipal Code policies or provisions for occupancy of public space to minimize and reduce construction staging on public sidewalks and streets, taking into account other potential mechanisms to reduce impacts such as zoning setbacks and construction methods, all with a view to providing facilities of an appropriate dimension and beautiful aesthetics both during and after construction, and to report back to Public Works and Infrastructure Committee by no later than March 31, 2012.

## **COMMENTS**

Effective management of a municipality's public street allowance network is a key responsibility and critical to ensuring public safety, coordination of a multitude of activities and installations, and protection of vital municipal and public utility infrastructure. The importance of this management intensifies in a complex and increasingly dense urban environment like Toronto.

A "Streets" by-law is the means by which the municipality manages its public rights-of-ways. Provisions provide the framework (in terms of criteria, application and permitting process, appeals and penalties) for all parties excavating; constructing; doing work; temporarily occupying; conducting various activities and events; enabling certain encroachments; and maintenance considerations. A Streets by-law establishes activities that are permitted and prohibited within the road allowance.

Prior to amalgamation, the seven municipalities now comprising the City of Toronto all had separate, often dissimilar by-laws and policies, as itemized in Recommendation 2 above, governing activities within the public right-of-way. While a number of elements have already been updated and harmonized under Chapter 743 – Use of Streets and Sidewalks, and others of the City of Toronto Municipal Code, (including residential front yard and on-street permit parking, municipal road damage deposits, utility cut permit conditions, publication dispensing boxes, and street events), there are still many regulations relating to other significant, but frequently occurring activities within the public right-of-way, such as excavating, temporary street occupations, commercial/industrial boulevard parking, boulevard maintenance and encroachments, that remain subject to the old, disparate by-laws.

This assortment of municipal laws is a challenge to administer on a uniform basis, is subject to multiple interpretations, and can confuse the public who view these inconsistencies as both frustrating and inefficient. As was indicated in the previous report (Item PW5.4) draft amendments to Chapter 743 of the Toronto Municipal Code will

create new consolidated sections to uniformly manage the approval and administration of activities such as temporary street occupations, street work, encroachments, sidewalks, walkways and driveways. These amendments also introduce a uniform enforcement and appeal process. The proposed provisions being advanced accommodate some routine elements that currently require a permit and/or payment of fees as of right, subject to specified criteria. In addition, the provisions provide that property owners and occupiers of land abutting public rights-of-way take reasonable responsibility for maintaining the municipal boulevards adjoining their lots, specifically grass cutting and the maintenance of private landscaping features such as hedges, gardens and other specified encroachments.

### **Summary of Consultation Process**

Pursuant to the public consultation plan approved by City Council on July 12, 2011, the proposed amendments and supporting documentation are available for public review and comment on the City of Toronto's website at (<http://www.toronto.ca/involved/projects/streetsbylaw>). The website has been active since July 14, 2011. The consultation program was also posted on the City's Facebook and Twitter accounts.

The City's Business Improvement and Resident Associations, totalling 470 organizations City-wide, were individually invited to attend presentations on the amendments that were held at Metro Hall on the following dates:

- Business Improvement Associations – July 19, 2011, 9:00 a.m. to 11:00 a.m.;
- Resident's Associations – July 21, 2011, 4:00 p.m. to 5:30 p.m. and 7:00 p.m. to 8:30 p.m.

City Councillors were also notified of these meetings, provided with briefing notes and invited to attend. Eleven City Councillors requested individual briefings from staff on the proposed amendments.

A staff presentation to the Resident and Business Improvement Associations describing the proposed amendments was followed by a question and answer period. A copy of the draft amendments as well as supporting documentation, including a comparison of existing and proposed legislation, was available to attendees.

Public open houses in each of the Community Council districts were held on the following dates:

- Etobicoke Civic Centre – September 8, 2011, 6:30 p.m. to 8:00 p.m.;
- North York Civic Centre – September 14, 2011, 6:30 p.m. to 8:00 p.m.;
- Metro Hall (for Toronto-East York District) – September 15, 2011, 6:30 p.m. to 8:00 p.m.; and,
- Scarborough Civic Centre – September 19, 2011, 6:30 p.m. to 8:00 p.m.

Notice of the public open houses was posted on the City of Toronto's website, and published in the August 31, 2011, and September 6, 2011 editions of the *Toronto Star*. Ward Councillors and the City's Business Improvement and Resident's Associations were also individually notified of the open house dates, times and locations.

Display boards were provided at each open house summarizing the proposed amendments, with staff available for questions and answers. Copies of the display boards and accompanying detailed notes pages were available to attendees. The draft amendment, including supporting documentation, briefing notes, as well as a comparison of existing and proposed legislation, was also provided. In total, approximately eighty people attended the information sessions.

BIA members who attended, including a representative from the Toronto Association of Business Improvement Areas (TABIA), were particularly supportive of the proposed amendments regarding permitted encroachments in BIAs. However, they expressed general frustration with street work (excavation) in BIA areas, particularly street work undertaken by public and private utilities. Those BIA members in attendance indicated that there is often little or no advance notice of proposed street work, resulting in disruption to businesses and customers. The BIAs suggested that the proposed amendments contain a clause requiring that anyone who obtains a permit for street work or temporary street occupation provide the local BIA with at least 48 hours advance notice of their proposed street work/temporary street occupation.

Representatives from the Residents' Associations were generally supportive of the amendments, although a number of attendees indicated that the City needs to more aggressively pursue on-line solutions to the permitting process, particularly allowing residents and property owners to obtain street work and temporary street occupation permits through the City's website. Staff advised that these "e-solutions" are enhancements we are certainly interested in pursuing, but require further development; development that cannot proceed until City Council approves the final by-law.

The majority of attendees at the September Open Houses were also supportive of the proposed amendments. But a number of attendees, in addition to those City Councillors receiving individual briefings on the amendments, expressed concern about a lack of clarity in Article V (Maintaining Boulevards) regarding maintenance responsibilities, specifically for culverts on ditched streets, and that the appeal period following staff's refusal of an application as specified in Article IX (Appeals), presently set at ten business days, is too short. There were also objections to the requirement that residents pay for permits to repave an existing driveway as specified in Article VII (Constructing Driveways and Walkways). This is addressed in more detail below, and it is noted that staff are not recommending changes at this time.

Finally, another suggestion was that to encourage compliance and reduce costs, the City should charge an inspection fee applicable at locations where residents or property owners have not complied with a By-law Officer's initial notice to comply, and staff are required to attend a location multiple times to issue additional notices and perform

subsequent inspections. Such an amendment is not difficult to introduce, as a survey and inspection fee of \$70.64 is already identified in Appendix C, Schedule 2, of Chapter 441, Fees and Charges, of the Toronto Municipal Code.

These items have been addressed in the proposed revisions (see Attachment No. 2). It is noted that a number of other minor technical wording changes have been incorporated.

### **Camping, Dwelling and Lodging in Streets**

Clause §743-12 as found in the draft by-law attached to Item PW 5.4 proposes to prohibit camping, dwelling or lodging in a street without the approval of the General Manager. The intent of this clause is a general statement indicating that such activity is not encouraged in public rights-of-way due to the inherent risk to persons and property that can result from this encroachment. Through the consultation process, this provision was subject of notable interest, and a number of individuals stated that the clause should be removed. In their opinion, the clause is both unnecessary and an instrument to be used against the homeless, despite the fact that Article XVIII of the amendments states that removing such an encroachment would still require fourteen days advance notice.

Similar to the existing by-laws, “obstructing” or “encumbering” a street would be prohibited under § 743-9A of the proposed amendments. The existing provision is currently used in conjunction with the Interdepartmental Protocol for Homeless People Camping in Public Spaces, which has been in place since 2005. This protocol has been used successfully over the past six years, and has proven that providing a coordinated outreach and social service approach is a more effective response than relying solely on enforcement.

The protocol outlines how Shelter, Support and Housing Administration coordinates closely with other City Divisions, such as Transportation Services, Parks, Forestry and Recreation, and Facilities Management, to provide outreach services to homeless individuals before starting any enforcement activities related to public spaces, such as removing unauthorized structures, persons, personal goods and debris. Individuals are offered assistance, as required, to access:

- health, mental health, addiction and family reunification services;
- income support;
- housing and supportive housing options; and,
- shelter and outreach services.

In most circumstances, given the appropriate outreach and support over time, individuals are assisted to secure better alternatives than sleeping outside and will voluntarily vacate public spaces, making enforcement unnecessary. Where enforcement is necessary, activities are coordinated between City Divisions to ensure the safety of staff and individuals still at the site.

From a Transportation Services perspective, the lack of such a clause does not materially affect or alter how we currently deal with these types of encroachments. In view of the

foregoing, the clause is recommended for removal at this time. Its elimination does not affect the rest of the document.

### **Permits for Repaving Existing Driveways and Walkways**

A concern expressed by several attendees and a number of City Councillors is the requirement in Article VII (Constructing Walkways and Driveways), that property owners obtain a permit from the City to reconstruct or repave an existing walkway or driveway within the right of way. Their view is that existing walkways and driveways, especially those that property owners are not widening beyond what currently exists, are not a significant public safety or policy issue, and that enforcing such a regulation does not appear to be a particularly efficient use of City resources.

At present, the only existing by-law specifically stating that a property owner must obtain a permit before repaving a driveway is By-law No.21621, applicable within the former City of North York. Chapter 313-21 of the former City of Toronto Municipal Code authorizes staff to issue permits to repave a driveway on the basis that repaving, similar to any excavation in a road allowance, is work that the municipality prohibits without a permit. A similar interpretation was taken in Scarborough starting in 2009.

Prior to amalgamation, former Metropolitan Toronto did not levy fees to repave existing driveways, nor did the former City of York or the former Borough of East York. The Municipal Code of the former City of Etobicoke specifies an application process and permit fees, but just for constructing new driveways or widening existing driveways, not specifically to repave them. This being the case, the practise in former East York, Etobicoke and York was to limit driveway permitting to new driveways, as well as to property owners proposing to widen their existing driveways. This operating principle is similar to municipalities surrounding the City of Toronto (Brampton, Markham, Mississauga, Pickering and Vaughan) who do not require that property owners obtain a permit to repave an existing driveway, only to construct new driveways or widen existing ones.

From a Transportation Services perspective, obtaining a paving permit:

- Provides pre-inspection by Transportation Services By-law Officers that helps to reduce damage to curbs and sidewalks, identifies potential conflicts with trees and utilities in the vicinity of the driveway, and ensures that the property owner is not held financially responsible for pre-existing damage to curbs or sidewalks;
- Introduces pre- and post-inspection to ensure that driveway dimensions conform to City by-laws;
- Allows By-law Officers to provide property owners with information on what is allowed within the road allowance, since encroachments such as curbs or retaining walls are often constructed concurrent with the driveway;
- Assists contractors in establish proper work zones on the public street;
- Places liability for construction on the applicant and their contractor; and,
- Allows the municipality to confirm potential conflicts with future capital and utility work to avoid excavating the driveway after the applicant's work is completed.

The present cost of a paving permit is \$129.45. Table No.1 presents paving permit numbers and revenues for 2005 to 2011.

**Table No.1  
Paving Permit Statistics 2005 - August 2011**

District	Year						
	2005	2006	2007	2008	2009	2010	2011
Etobicoke-York	4	0	2	2	1	32	6
North York	471	398	612	541	319	243	216
Toronto-East York	163	196	121	82	77	95	42
Scarborough	0	0	1	0	488	952	537
<b>Total Permits</b>	637	594	736	626	886	1,321	801
<b>Total Revenue</b>	\$73,497.06	\$69,699.96	\$88,003.52	\$76,722.56	\$112,601.74	\$167,885.89	\$103,689.45

There is insufficient data on the permits to confirm exactly how many of these permits were issued specifically for walkways, driveways or front yard parking pads, if the properties are commercial/industrial or residential, if the permits are for existing driveways, or for driveways that are widened.

Other alternatives for dealing with the paving permit issue would be to reduce the fee, or waive the fee entirely and provide the permit to the applicant without charge.

Eliminating the permit fee entirely, which is consistent with the proposed approval process for administering permitted encroachments described in Article IV (Encroachments in Streets), would still enable staff to protect the right-of-way. Over the past couple of years however, revenue generation from these types of permits has averaged in the \$120,000 - \$130,000 range, although only a portion would be derived from repaving existing driveways.

On a related matter, City Council, at its meeting of May 17-19, 2011, adopted a report from the Municipal Licensing and Standards Division approving the licensing of driveway paving contractors (Item LS3.2). This by-law came into effect on July 4, 2011. The by-law requires that paving contractors working in the City of Toronto obtain a business license from the City, and a condition of their license states that they “. . . obtain all permits and approvals required by law prior to the commencement of any work.”

### **Occupying Public Space for Construction Staging**

Pursuant to Recommendation 5 of City Council’s approval of July 12, 2011, staff has initiated the assessment of alternatives to reduce the impacts of construction-related

activity on the use of municipal road allowance, particularly work generated by new development, both during the construction and after the project is completed.

At present, developers are permitted to occupy municipal road allowance for construction-related activity when no other alternatives are available. Where the occupancy of public road allowance for construction purposes is privately-initiated and will last longer than 30 days, approval from Community or City Council is required before the section of road allowance can be closed for construction purposes. A number of provisions in the draft by-law carry forward the existing requirements to ensure that minimum standards are set for construction staging within the streets, including pedestrian requirements, lighting, hoarding, cleanliness, etc.

Areas of the City experiencing growth and redevelopment, in accordance with Official Plan policies, include the downtown core where there are generally limited rights-of-ways combined with comparatively smaller properties than those found in other areas experiencing growth such as the centres in Etobicoke, North York and Scarborough. Despite the best efforts of both staff and the development industry to avoid encroachment into public space, in many cases there is simply no alternative but to use municipal road allowance to accommodate construction.

Increasing building setbacks (at- and above-grade) on new developments does often occur as sidewalk widening, tree planting and other urban design objectives are being comprehensively considered with appropriate building height, density and massing. This may have the added benefit of accommodating construction activities and reducing the impact on the public realm during this period. However, this is often negated during the construction phase as the below-grade portion of the project typically extends to the property line. It remains the case in these high density areas that building and zoning setbacks will never be significant enough to eliminate encroaching into the public right-of-way.

Staff of City Planning and Transportation Services are in the process of arranging industry consultation on these matters with the goal of seeking solutions and improvements that may be achievable in terms of the function and aesthetics of construction staging, and strategies to minimize impacts. We will report further on these matters targeting the Council established March 2012 time frame.

In the meantime, ensuring public safety at development sites that are temporarily occupying municipal road allowance for construction purposes is the overriding priority, and the approval and permitting processes in the draft by-law ensure that occupancy of the right-of-way is minimised and that the work is finished as expeditiously as possible.

The recommended draft by-law is presented for the Committee's consideration in Attachment No. 1. Attachment No. 2 provides a summary of the proposed changes compared to the initial draft version attached to the June 7, 2011 staff report contained in Item PW5.4.

## **CONTACT**

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## **SIGNATURE**

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Gary Welsh, P.Eng  
General Manager, Transportation Services

## **ATTACHMENTS**

Attachment No. 1, Draft By-law  
Attachment No. 2, Recommended Revisions