



STAFF REPORT ACTION REQUIRED

Use of Paid Duty Officers - Options for Film Shoots and Film Events

Date:	October 17, 2011
To:	Toronto Film Board
From:	Film Commissioner, Economic Development and Culture
Wards:	All
Reference Number:	FB1-16112011

SUMMARY

This report summarizes the results of working group struck to examine the options relating to the use of paid duty police (PDO) and traffic control persons (TCP) in connection with film and television permits. The report recommends that Council endorse these results and outlines scenarios and situations where the use of Traffic Control Persons would be permitted in connection with permits issued for film events and location filming in accordance with existing Ministry of Transportation guidelines. This report is also complimentary to the one adopted by the Public Works and Infrastructure Committee at its meeting of November 3, 2011. That report dealt with a review of the manner in which police presence is prescribed and required on construction sites.

RECOMMENDATIONS

The Film Commissioner, Economic Development and Culture, recommends that:

1. This report be forwarded to the Toronto Police Services Board; and
2. City Council endorse the use of Traffic Control Persons for film and television productions and film events as an authorized option for traffic control in accordance with existing Ministry of Transportation scenarios as outlined in Ontario Traffic Manual (OTM) Book 7 and that decisions regarding traffic control be taken by the Toronto Film and Television Office in consultation with Toronto Police and City of Toronto Transportation Services.

Financial Impact

There are no direct financial impacts resulting from the adoption of this report.

DECISION HISTORY

The issue of alternatives to the use of paid duty officers was first raised by Councillor McConnell at the Police Services Board (PSB) in February 2008. A report from William Blair, Chief of Police came forward to the PSB January 22, 2009 in response to Motion No. 1, as amended, adopted by the Board at its meeting of September 18, 2008,

“1. that the Chair, in consultation with the Chief of Police, provide a report on the history of the Board’s handling of the paid duty issue, the reasons and the process by which the ability to set the hourly paid duty rates was transferred to the Toronto Police Association, the provincial legislation as well as City by-laws that require the use of paid duty, and any impact that requirement of paid duty may have had on the ability of City-funded, community based agencies and organizations to carry out their programs.”

Also at its January 22, 2009, meeting, the Board considered a report from Alok Mukherjee, Board Chair, dated January 12, 2009, in response to Motion No. 1 above. The Board approved motion number 3 to include the film and television industry in the paid duty officer review and any eventual procedure change:

“3. THAT the Board refer the materials provided by Councillor Vaughan to the Chief and request that members of the Service meet with representatives of the Toronto Film and Television Office with the view to participate in the development of a protocol and guidelines that will be satisfactory to both the Service and the City.”

At its meeting of December 17, 2009, the Board considered a report from Councillor Pam McConnell, Acting Chair, regarding the review of paid duty practices. The Board approved several motions, including:

“3. THAT the Board request the City Manager to provide a report to the Board by April 2010 on street festivals sponsored by members of the Toronto Association of Business Improvement Areas (TABIA) that will require street closures;

4. THAT the Board request the Toronto Film and Television Office to work with the City Manager and the Chief of Police towards establishing a system of traffic control persons to manage traffic on film shoots.”

At its meeting on April 22, 2010, the Board considered a report from the Chief of Police, dated March 25, 2010, regarding the feasibility of using Traffic Control Persons to manage traffic on film shoots. The report identifies that decisions regarding the need for Paid Duty Officers are driven by considerations of public safety, reduction of traffic congestion, and

minimization of traffic disruptions. It states that PDOs have proven to be an efficient and effective resource to manage these demands.

With regards to the question of Traffic Control Persons (TCP), the report notes that a TCP has neither the depth of training nor the authority under the Highway Traffic Act to control vehicular and pedestrian traffic at a filming location. The Chief also noted that a meeting was held with the Film Commissioner and General Manager of Economic Development and Culture the outcome of which was that "... open communication would continue ". The report of March 25, 2010 concluded that due to their limited training as well as employer and work restrictions TCPs are not suitable and would create a serious liability for the City of Toronto if assigned to a film shoot. The Board received the report and agreed to send a copy to the City's Auditor General for information in conjunction with the review that he is conducting on the paid duty system.

Further to this, the Toronto Police Services Board at its meeting held on June 8 and 9, 2010, considered a report from City Manager Joseph P. Pennachetti which brought forward a recommendation that a Working Group be established, including members from the Toronto Police Service, Toronto Film Board and Ministry of Transportation and supported by staff from the City Manager's Office, Film and Television Office, Transportation and Legal Services, to investigate options and alternatives for managing traffic at film shoots and report back to the Police Services Board.

Subsequent to this report being adopted by the Police Services Board, a working group was established including representatives from the Ministry of Transportation, the Ministry of Labour, City of Toronto Transportation Services and the Toronto Film and Television Office.

Finally, Public Works and Infrastructure Committee at its meeting of November 3, 2011 had before it a report from the General Manager of Transportation Services entitled "Review of Paid Duty Officers' Traffic Control Assignments" which dealt with a review of the manner in which police presence is prescribed and required on construction sites.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW9.7> While this report deals with paid Duty Officers, it does so from the perspective of work on construction sites. Accordingly, the two reports are separate and distinct in both content and purpose and therefore are being reported separately.

ISSUE BACKGROUND

The Film and Television Industry has long felt that the use of TCPs on their production locations should be permitted as the use of this method of traffic control has always been permitted on construction sites throughout the City. The film business is now an extremely competitive global one in which even small cost advantages can make the difference between securing a shoot and losing a project to another jurisdiction. The specific rates charged for a PDO has also often been cited as an issue for production, particularly when the location involved multiple officers over an extended period of time.

As the level of concern and scrutiny relating to these two points increased, it became apparent that this matter needed to be re-examined with all parties at the table to explore any and all possibilities to address them, for the benefit of the Film and Television Industry, the City of Toronto, and the Toronto Police Service.

COMMENTS

Legislative Authority and Training

In the initial report on this matter by the Police Service, it was noted that TCPs had neither the authority under the provisions of the Highway Traffic Act to control traffic on film and television shoots nor the depth of training. After meeting with the Ministry of Transportation and clarifying certain provisions of the Act, representatives of the Ministry advised that the use of TCPs at film and television shoots in limited scenarios, as described in OTM Book 7 and similar to the one depicted in Appendix 1, are appropriate. This determination was made in considering sub-section (b) of section 146.1 of the HTA as copied below;

146.1 (7) Definitions

.....“traffic control person” means a person who is directing traffic and,

- (a) is employed by,
 - (i) the road authority with jurisdiction over the highway,
 - (ii) a public utility within the meaning of the public utilities act or the municipal act, 2001,
 - (iii) a transmitter or distributor within the meaning of the electricity act, 1998, or
 - (iv) a person under contract with the road authority, public utility, transmitter or distributor to do construction or maintenance work on or adjacent to the roadway, **or**

(b) is employed by or under contract with a person who has been issued a permit or written authorization by the road authority with jurisdiction over the highway to occupy a lane or a portion of a highway in order to undertake work on or adjacent to the highway. 2005, c. 26, schedule a, s. 23.

City of Toronto Transportation Services in the issuance of their permits for construction related activities does allow for the use of TCPs as an alternative to PDOs under those specific Book 7 scenarios, but does require that they also be trained and certified. This requirement for training and certification would be extended to cover any TCPs permitted under authority of location filming permits issued by the Film Commissioner through the Toronto Film and Television Office.

Through discussion with representatives of the Toronto Police service, the Ministry of Transportation, the Toronto Film and Television office and Transportation Services, it was agreed that the use of TCPs on film shoots, under certain circumstances is permitted. This determination came in consideration of Section 146.1 (7) b of the Act where under that

section, the TCP would be under contract to the Production Company, working on or adjacent a public highway under written authorization (in the form of the location filming permit) issued by the authority having jurisdiction over the highway, that being City Council having delegated that authority to the Office of the Film Commissioner pursuant to Chapter 459 of the Toronto Municipal Code.

The original determination as to legal authority seems to have been made essentially only considering Section 146.1 (7) a) sub-sections (iv) and the premise that TCPs were only to be used on construction and construction related projects rather than fully considering subsection (b).

Permit Issuance

The Toronto Film and Television Office is responsible for the issuance of all location filming permits within the City of Toronto. The issuance of these permits and the determination as to the level and type of traffic control is done in direct consultation with TFTO staff, the Toronto Police Service, Transportation Services and film production companies. While the adherence to the provisions of OTM Book 7 is a statutory requirement within the Province of Ontario for all occupiers of the public highway, the presence of PDOs is not. Notwithstanding this, as is often the case, productions will themselves choose to employ the use of PDOs as an enhanced level of presence for their particular shoots.

While the Ministry of Transportation had not previously contemplated the use of TCPs in connection with location filming permits in incorporating the provisions of Section 146.1 (7) b into the HTA, it did agree that the interpretation was appropriate and did allow for the use of TCPs in connection with these permits. The Ministry also noted that given this scenario, the definition of the TCP in OTM Book 7 and OSHA should not be applied so stringently so as to appear to prohibit it.

In recognizing the legitimate use of TCPs on film and television shoots, the Ministry also noted that this was to be done with the same application of the requirements of OTM Book 7 as relates to training, instruction to and equipping of TCPs and their use only under those approved scenarios also contained in Book 7.

Through these discussions, it also became apparent that while it has been a consistent permit condition of the TFTO to require the presence of PDOs for all lane closures where rush hour exemptions have been granted, there is no legislative or Book 7 requirement to continue this practice.

Role and Function

One aspect of the discussion that needs to be highlighted is that the replacement or substitution of TCPs for PDOs is not done on a one-for-one. While TCPs are strictly limited to the control of a single lane of traffic in a single direction, with a maximum of two for a two-lane two-way road (see Appendix 1), PDOs on the other-hand are not limited in their

authority. As constables hired to enforce provisions of the Highway Traffic Act they are also automatically authorized to control intersections, signalized or not and multiple lanes of traffic. PDOs are also exclusively authorized to permit or facilitate selective traffic flow, where they would permit one type of vehicle to enter a 'closed' section of a public highway, while prohibiting others, as is often required on both construction sites and filming locations with the respective industry type vehicles. As this type of traffic control requires the hand gesturing of vehicular movements. TCPs are legislatively prohibited from performing in this capacity. While the industry may ultimately want to adjust this differentiation under defined circumstance, any proposed broadening of the scope of the role or function of a TCP would require a legislative change by the Province.

In either circumstance, whether PDOs or TCPs are to be used, the occupier of the public highway is still required by their respective permit, to satisfy the balance of the specifications for their road occupation scenario as illustrated in OTM Book 7 with respect to the placement of traffic control signs and or devices. While the presence of a PDO has often been viewed by the courts and the construction industry as an additional level of safety on their sites, particularly where the basic minimum specifications of OTM Book 7 cannot be met (as is often the case in downtown Toronto due to physical geography) the presence of TCPs or additional TCPs has not.

Costs

As noted above, one concern expressed consistently over time was the rate of pay and therefore overall costs incurred by productions in having to employ PDOs on their location filming sets for traffic control within the public highway.

At present, the hourly rate for a PDO is \$65.00/hr with a minimum 3 hour assignment with an additional 15% added as an administrative cost applied to the overall total cost of the officers involved. Where four officers are required on a given shoot, a sergeant is also required at a rate of \$73.00/hr with the same requirements noted above.

The cost of a TCP is in the order of approximately \$25.00/hr with no additional administrative costs applied to the total, and no minimum shift period. It may be, however, that the film industry finds that the expected cost savings are not there once they factor in the limitations of a TCP in comparison with that of a PDO.

Other Concerns

In many film related road occupation scenarios, the use of PDOs will continue to be the norm, and only in specific situations will the use of a TCP be an option. Another benefit to having PDOs on-site or on-set is the inherent security that a police presence brings when dealing with crowd control issues, which is neither apparent or authorized when utilizing TCPs.

Given the broader authority and applicability of PDOs as opposed to TCPs, the presence of PDOs on-site or on-set does afford the production more operational flexibility during the

'shoot' as relates to changes in traffic operation, and does not have any associated lead time in processing requests for changes and the delivery and set-up of additional traffic signs and control devices.

Additionally, there is the question of the assumption of additional liability that the production may assume should the option and decision to utilize a TCP, as opposed to a PDO, be made. At present, when a PDO assumes his or her post on-site or on-set as 'traffic control', they automatically assume responsibility and thus some operational liability for the safety of the location for the duration of the time they are present. Should a production have and choose the option of using TCPs in lieu of PDO, the liability can no longer be shared and shifts onto the production and/or production and TCP staffing company hired.

Next Steps

The training and certification in OTM Book 7 of Film and Television Industry was discussed by the working group. It was clear that training and awareness building is required. It could be arranged through the City of Toronto Transportation Services Division and their partnership with OTC (the Ontario Traffic Council).

Also discussed amongst the members of the working group was the holding of information sessions for production industry suppliers to make them aware of OTM Book 7 and especially the material specifications for the various traffic control signs and devices prescribed in that manual. Supply and production companies must understand that their set-ups are always subject to inspection/audit to ensure their compliance with the specifications. Failure to comply would result in delays, the potential need to reschedule and even fines.

While the Ministry of Transportation has been clear that the use of TCPs on film and television productions for traffic control is permitted, in certain scenarios for the film industry and a Municipality, the above noted concerns need to be addressed to ensure that the safety of the public and the workers associated with these productions is neither compromised nor diminished.

Film companies have also asked the question, "If given the option of the use of a TCP, could they employ their own personnel?" The short answer is yes, however, in allowing productions to employ their own personnel in the role of TCPs, the following is required:

- Overall industry awareness of and familiarity with OTM Book 7
- OTM Book 7 training and certification of film industry personnel
- Industry supplier compliance with and satisfaction of the material specifications as described in OTM Book 7
- Compliance with the provisions of OTM Book 7 for Film and television road set-up

It also needs to be restated that film companies who choose to use a TCP as opposed to a PDO, and in particular their own staff, do shoulder an increase in liability.

CONCLUSION

As noted above the Ministry of Transportation has recognized that the use of Traffic Control Persons on film and television locations may be appropriate and permitted under the provisions of the Highway Traffic Act. The use of the TCP, however, is strictly limited to specific provisions of OTM Book 7.

The Task Group has found that use of a Paid Duty Officer, therefore, is not always required and can be substituted in specific scenarios by a Traffic Control Person. Additionally, in the case of a lane closure neither PDO nor TCP is mandatory. Finally, situations will continue where a PDO will be required by the Film Office and City as a condition of a Location Filming Permit. To reiterate, all permits related road occupation, whether supervised by PDO, TCP or not at all are subject to OTM Book 7 set-up.

Observations of street occupation over the past year indicate that the current level of compliance with OTM Book 7 specifications is poor. Investigation into this has led to the conclusion, by representatives from the Ministry of Transportation, the Ministry of Labour, Toronto Transportation Services, the Toronto Police Service and the Toronto Film and Television Office, that this is a result of level of industry familiarity with the provisions of the HTA and Book 7 as well as its applicability to film and television production.

In considering the foregoing, it is recommended that City Council endorse the option for the use of traffic Control Persons in lieu of Paid Duty Officers by the film and television industry and the process whereby decisions are made on a case by case basis after consultation by the Film and Television Office with the Toronto Police Service and City of Toronto Transportation Services. In all cases, set-up must be constructed in accordance with existing Ministry of Transportation scenarios as outlined in Ontario Traffic Manual Book 7.

CONTACT

Peter Finestone,
Film Commissioner
Economic Development & Culture
Tel: (416) 392-3376
Fax: (416) 392-5332
pfinesto@toronto.ca

Eric Jensen
Manager, Toronto Film & Television Office
Economic Development & Culture
Tel: (416) 392-1333
Fax: (416) 392-5332
ejensen@toronto.ca

SIGNATURE

Peter Finestone
Film Commissioner

Appendix 1

Sample set-up as per OTM Book 7

