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Standing Committee on Social Policy
c/o Tonia Grannum, Clerk of the Committee
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

RE: City of Toronto staff comments on Bill 171, Building Transit Faster Act, 2020 and associated regulations.

Dear Standing Committee Members:

City of Toronto staff have reviewed Bill 171, *Building Transit Faster Act, 2020*, and the associated draft regulations that, if enacted, will provide a series of new and expanded powers to the Minister of Transportation for the purpose of expediting the delivery of the Province's four priority transit projects: the Ontario Line, the Scarborough Subway Extension, the Yonge North Subway Extension and the Eglinton Crosstown West Extension (the "Provincial Projects").

The City's comments are summarized in this letter and provided in more detail in the attached table. This legislative review is an important opportunity for the City and the Province to determine how to best support the Provincial Projects while limiting impacts to City capital works and ongoing operations. The City looks forward to discussing our respective government's key objectives as they pertain to this legislation. In addition, the City is proposing some amendments to the *Public Service Works on Highways Act* consistent with the basic policy intent of Bill 171 to support the undertaking of public infrastructure projects in a timely, fair and efficient way.

Bill 171 formalizes the Province's transit acceleration measures included in the "Provincial Statement of Intent Related to the Arrangement to Support Accelerating Transit Delivery" (see [EX12.3 - Attachment 2](#)), which provided a high-level overview of Provincial objectives and goals, and a formal commitment to consultation and engagement with the City. The "structured engagement process" referenced in the Statement of Intent is an important opportunity for the City and the Province to jointly define the processes, procedures, and agreements necessary to ensure that the City can best support the Provincial Projects while also limiting impacts on other City projects and operations.

While the City supports the Province's efforts to streamline delivery of major transit expansion projects, the changes proposed in Bill 171 will impact the City's ability to operate effectively and to proceed with its own capital projects on scheduled timelines. The City of Toronto requires the ability to efficiently plan and coordinate City capital works in areas near the Provincial Projects, while ensuring impacts to City divisions and the Toronto Transit Commission (TTC) arising from construction activities are effectively managed. The achievement of these objectives may be hampered by the new and expanded powers to control competing or conflicting works in areas near the Provincial Projects and to remove obstacles to such projects, if Bill 171 is enacted in its current form.

Furthermore, Bill 171 may result in the City losing control over projects, assets, and land near the Provincial Projects resulting in the City suffering financial losses and damages that will not be recoverable from Metrolinx or the Province. It is the City's position that Bill 171 must provide for adequate compensation to the

City for any losses and damage it may incur resulting from actions taken under it. The City is also mindful of the fact that infrastructure like the Provincial Projects, however welcome, will have a long term cost impact on the ability of the City and its agencies (e.g. Toronto Transit Commission) to maintain state of good repair and rehabilitate Provincial Projects operated by the City and other public infrastructure in the future.

In keeping with the City of Toronto's concerns respecting the ability to efficiently plan and coordinate City capital works, it is noted that Bill 171 includes a series of housekeeping amendments to the *Public Service Works on Highways Act* ("*PSWHA*"), mainly to modernize some of the terms. The City of Toronto is currently having on-going discussions with natural gas and electricity distributors regarding the applicability of the PSWHA to various projects, including transit and waterfront revitalization projects. The City therefore requests that the Province also consider taking this opportunity to make further amendments to the PSWHA that would facilitate the efficient delivery of transit and other public infrastructure projects situated within the public highway by public authorities, by clarifying the roles and responsibilities of public authorities (e.g., municipalities, Infrastructure Ontario, Ministry of Transportation, etc.) and utility companies. We ask the Province to consider whether this bill also provides an opportunity to make some long overdue clarifying amendments to the PSWHA to better reflect the public interest in allowing public infrastructure projects to be undertaken in a fair, cost-effective and timely way.

The City has numerous comments and clarification questions regarding the scope, applicability and implementation of many provisions of Bill 171 as it is currently drafted. These include questions about the City's ability to fulfill its statutory obligations under such legislation as the *Building Code Act*, the *Planning Act*, the *Clean Water Act*, and the *Water Resources Act*, all while complying with requirements imposed under Bill 171. Together with section specific comments and requested amendments to the PSWHA, these questions are set out in the attachment included with this letter.

It is the City's position that robust consultation and engagement between the City and the Province will help to successfully and efficiently implement the Provincial Projects. The City requests a formal consultation process on these measures as outlined in the Province's aforementioned Statement of Intent. Further to the signing of the Preliminary Agreement, we look forward to continuing our ongoing collaboration to deliver transit expansion projects in Toronto.

If you have any questions regarding the City's submission, please contact Tracey Cook, Deputy City Manager, Infrastructure & Development Services at Tracey.Cook@toronto.ca.

Sincerely,

Chris Murray
City Manager

Attachments: City of Toronto Detailed Comment Submission on Bill 171, Environmental Registry Proposal Numbers 019-0614 and 091-1332, and requested amendments to the Public Service Works on Highways Act.

c: Derrick Toigo, Executive Director, Transit Expansion Office
Rick Leary, Chief Executive Officer, Toronto Transit Commission
Shelley Tapp, Deputy Minister, Ministry of Transportation
Michael Lindsay, President, Project Delivery, Infrastructure Ontario

Attachment 1: City of Toronto Detailed Comment Submission

Table 1: City of Toronto Comments on Bill 171 – Building Transit Faster Act (2020)

Bill Section	Topic	City of Toronto Comment
Part 1: Purpose and Interpretation		
S. 2	Definitions	<ul style="list-style-type: none"> See City comments under Section 62.
Part 2: Corridor Control		
S. 3-11	Development Control & Obstruction Removal Development Control	<ul style="list-style-type: none"> The City does not wish to be subject to a separate permitting process for conducting its work in the transit corridors; given our respective commitments to coordination, delivery and the project governance we have in place, a separate permitting process would represent unnecessary red tape and delay to City projects. The City requires clarity regarding the proposed permitting regime, including the process for obtaining permits, criteria by which permits will be granted, the scope and scale of projects requiring a permit, who to seek permissions from to obtain a permit, timelines, and how the permitting regime may interface with the <i>Building Code Act</i> and the Ontario Building Code. Clarification is needed on potential variations in criteria depending on whether the permit application is for a location associated with a transit station versus a location along the corridor, and whether the corridor is below grade, at grade or above grade. Clarification is needed on whether City projects that have been awarded but require the contractor to obtain permits and approvals for some of the work will require a permit under Bill 171. The City requests an exception under section 8 for municipal projects that are either underway, procured but not yet commenced, or in the procurement process. in order to reduce potential delay and other costs to City projects. Section 3(1) does not currently include demolition. The City requires clarity on whether demolition permits are impacted by this Bill.; Section 3(3) inclusion of "prescribed work" provides no certainty. The City issues a variety of permits to utility companies, developers, and homeowners which may be impacted by the need to also obtain parallel or complementary approvals from Metrolinx. The Bill does not speak to the scope of impacted building or construction projects within the defined corridor. The City requires clarity on whether this section is intended to include smaller projects (e.g., decks) and if there is an opportunity to exempt them. What constitutes an "emergency" under section 6?
S. 12-25	Obstruction Removal	<ul style="list-style-type: none"> The City requests consultation on this section and requires clarification on the following items within each sub-section: <ul style="list-style-type: none"> Section 12: what may be prescribed as a "prescribed thing". Section 12: implications for demolition permits and safety of buildings; implications on "part of buildings" and the remainder of the building Section 13: notice should be mandatory, not discretionary. Section 16: negotiations should be mandatory. Section 19: clarification on whether the Minister's right of entry includes entry into buildings or just onto the property, and whether mix-used properties are included in the definition of "dwellings". These comments also apply to Section 26(1).
S. 26-33	Construction Danger Inspection and Eliminations	<ul style="list-style-type: none"> The existing process requires a licence agreement for Metrolinx to occupy City-owned lands for its work. The licence agreement sets out limitations and conditions for each site, and addresses restoration and liability requirements for return of City-owned lands after completion of work. Clarity is required on how the Province intends to address City's requirements for return of City-owned lands.
S. 34-41	Preview inspection	<ul style="list-style-type: none"> The City requires consultation on how the right of entry is to be exercised in various scenarios.

Bill Section	Topic	City of Toronto Comment
S. 42-43	Compensation	<ul style="list-style-type: none"> It is the City's position that Bill 171 must provide compensation to the City for any losses and damage it may incur resulting from actions taken under it. Clarification is needed on how the Local Planning Appeal Tribunal (LPAT) would be qualified to adjudicate compensation disputes between Metrolinx and private developers. Clarification is required on how adjudicating disputes through LPAT would accelerate transit delivery. Clarification is required on the basis for the Minister's decision to compensate or not compensate a municipality and the basis for the quantum of such compensation.
Part 3: Expropriation		
S. 45(1)	Alternative Process	<ul style="list-style-type: none"> The City requires clarity on the process for resolving disputes related to expropriation of City-owned properties.
Part 4: Utility Company Cooperation		
Part IV	General	<ul style="list-style-type: none"> For municipal utilities, the City's position is that utility relocations be a negotiated in a manner similar to other major transit expansion projects based on the position that the current system has worked well for both parties. The proposed approach will have a significant impact on City utilities, the City's ability to deliver services, and may be very costly to the City.
Part IV	Application	<ul style="list-style-type: none"> The City requires clarity on whether this Part applies only to designated "transit corridor lands" or more broadly, and what parameters may be imposed on Metrolinx's discretion to issue notices to remove utilities where "necessary for a priority transit project"
S. 48	Acquiring permits	<ul style="list-style-type: none"> The City requires that all permits must be obtained and not just those obtained through "reasonable efforts".
S. 49	Timelines for notice to Utility Company	<ul style="list-style-type: none"> For City utilities, 60 days to remove or relocate a utility will not be sufficient, particularly if a full procurement is needed. The City requires that this timeline be extended.
Part 5: Municipal Service and Right of Way Access		
S. 52	Need for municipal service and right of way access	<ul style="list-style-type: none"> It is unclear how the City's requirements under other legislation such as the <i>Clean Water Act</i> and <i>Water Resources Act</i> would interface with this section of the Bill. For example, water infrastructure is designed to specific standards to ensure compliance with provincial legislation. Clarity on process for ensuring municipal infrastructure standards will be met needs to be addressed in the Bill.
S. 53	Notice	<ul style="list-style-type: none"> The City's position is that notice should be mandatory, not discretionary.
S. 57	Order	<ul style="list-style-type: none"> The City questions the need for a Ministerial right to grant Metrolinx access to the right-of-way on the basis that it could create conflicts and serious issues for other users if access was not provided through the municipal permit system as provided for under the <i>City of Toronto Act</i>. Terms of Ministerial orders that are identified as potential inclusions should be requirements. Consultation prior to a Ministerial order should include the particulars around the terms related to technical standards that must be met to support the municipal service and right of way access. The City would like to see clear provision of resources and compensation to address the impact on the municipality of the order, including mitigation measures for impacts to the public of the municipal service and right of way access. The City position is that it needs to ensure its infrastructure is adequately designed to meet its requirements, and the proposed process will undermine this.

Bill Section	Topic	City of Toronto Comment
Part 6: Administration		
S. 62	Designating transit corridor land	<ul style="list-style-type: none"> Clarity is needed on the parameters that would be utilized to define the extent of "transit corridor land". The City requires clarity on the duration of the designation of transit corridor lands (e.g., time limited versus indefinite). The City requires consultation on Ministerial orders for designation of "transit corridor lands", including further understanding of the delineation of transit corridors and any potential exclusions, in order to determine impacts to municipal planning policies, pre-existing development approvals, City capital works and/or other initiatives in the area.
Part 8: Administrative Penalties		
Part VIII	Application	<ul style="list-style-type: none"> The City objects to the proposed administrative penalties applying to municipalities.
Part 9: Administrative Penalties		
Part IX	Offences and Penalties	<ul style="list-style-type: none"> The City objects to the proposed offences and fines applying to municipalities.
Part 10: Miscellaneous		
S. 82	No cause of action, Proceedings barred	<ul style="list-style-type: none"> The City objects to these provisions.

Table 2: City of Toronto Comments on proposed amendments to Ontario Regulation 231/08 and Ontario Regulation on Ontario Line Project Environmental Assessment Process

Applicable Section(s) of Regulation	Topic	City of Toronto Comment
Ontario Regulation 231/08 Transit Projects and Metrolinx Undertakings		
Sections 22.4 – 22.6	Consultation	<ul style="list-style-type: none"> The previous regulation allowed interested parties to submit written objections within 30 days after the notice of environmental project report addendum was published. Those comments would be considered by the Minister. The City requests a process for interested parties to provide and address written comments/concerns for the three transit projects (Scarborough Subway Extension, Yonge Subway Extension, Eglinton Crosstown West Extension), including timeline requirements for submission to the Proponent. This process would provide impacted parties a clear timeline for submission of written comments to the Proponent.
Section 22.7	Issues Resolution Process	<ul style="list-style-type: none"> The City requests further clarity on the issue resolution process, including definition of unreasonable delay, which would provide clarity on parameters under which all parties are required to identify and resolve issues.

Ontario Regulation – Ontario Line Project Environmental Assessment Process		
Section 4(3)5	Environmental Conditions Report Requirements	<ul style="list-style-type: none"> The City requests that studies on areas of municipal importance, including those related to traffic impacts, road operations, water quality and infrastructure, noise and vibration, and rail safety, be included in sufficient detail.
Section 8(2)5	Draft Early Works Report Requirements	<ul style="list-style-type: none"> The City requests that studies on areas of municipal importance, including those related to traffic impacts, road operations, water quality and infrastructure, noise and vibration, and rail safety, be included in sufficient detail.
Section 15(2)5	Draft Environmental Impact Assessment Requirements	<ul style="list-style-type: none"> The City requests that studies on areas of municipal importance, including those related to traffic impacts, road operations, water quality and infrastructure, noise and vibration, and rail safety, be included in sufficient detail.
Sections 6, 10, 17, 21(11)	Consultations on Environmental Conditions Report, Early Works Report, and Environmental Impact Assessment Report, and consultations related to project scope changes	<ul style="list-style-type: none"> The City requests a process for interested parties to provide and address written comments/concerns, including timeline requirements for submissions to the Proponent. This process would provide clarity to impacted parties on how concerns will be documented and addressed through issue resolution process.
Sections 10(6), 17(6), 21(12)	Issues Resolution Process for Early Works Reports, Environmental Impact Reports, and project scope changes	<ul style="list-style-type: none"> The City requests further clarity on issue resolution process, including definition of unreasonable delay, which would provide clarity on parameters under which all parties are required to identify and resolve issues.

Table 3: City of Toronto requested amendments to the Public Service Works on Highways Act

Applicable Section of PSWHA	City of Toronto Requested Amendment
Section 2(1) – Clarifying/Expanding Definition of "Road Authority"	<ul style="list-style-type: none"> Amend the term "road authority" so it clearly permits public entities and agencies to get the benefit of the PSWHA when undertaking construction on behalf of municipalities and other road authorities, whether or not they have control of the highway. This better reflects the current reality of public sector construction. As a broader reform, the City also requests that the province consider whether this can be addressed by expanding the category of public entities that can require relocation of utility infrastructure in s. 2(1) beyond "road authorities" to a new broader category of "public authority". This term could include entities like municipalities and their local boards, public transit commissions/agencies, Waterfront Toronto, Infrastructure Ontario and Metrolinx, and would be more inclusive of the kinds of entities that deliver and maintain the state of good repair of transit and other infrastructure in Ontario.
Section 2(1) – Expanded Scope of Eligible Infrastructure Work	<ul style="list-style-type: none"> Amend s. 2(1) so that the obligation on utilities to relocate their works applies to all situations where relocation is required for construction/improvement/maintenance of public infrastructure, not just where required for the construction/improvement/maintenance of roads. Doing so would require a new definition of "public infrastructure" in the Act as an inclusive list that refers to transit infrastructure, as well as water/sewer, roads and facilities. The amendment would then reflect the manner in which such projects are actually undertaken so as to reduce disruption and costs (e.g., recognizing that road reconstruction is a necessary part of streetcar track replacement or utility replacement work). The prioritizing of road work to the exclusion of other infrastructure in the current PSWHA makes little policy sense in the context of how capital work programs are now coordinated and undertaken.

Section 2(2) – Defining Eligible Relocation Costs

- Amend s. 2(2) to clarify that the obligation on the public authority to share in the cost of labour for the relocation of utility infrastructure is limited to the cost that is reasonably necessary to carry out the relocation, and not necessarily in the form and location of relocation preferred by the utility company. This amendment would prevent utilities from using the necessity for a relocation as an opportunity to insist on changes which they would have otherwise planned and undertaken as part of their own capital programs at their sole expense.