



## REPORT FOR ACTION

## Logistical and Legal Implications of Eliminating Right of Way Occupancy for Private Construction Projects and Potential Provision of Construction Management Plans at Rezoning Stage

**Date:** December 20, 2019

**To:** Infrastructure and Environment Committee

**From:** General Manager, Transportation Services and Chief Planner and Executive Director, City Planning

**Wards:** All

### SUMMARY

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Extensive private development projects are significantly impacting the City's right of way. This report responds to outstanding requests from City Council to examine possible approaches to mitigation, including the legal implications of denying right of way permits and the provision of Construction Management Plans at the time of rezoning.

Further review of coordinating construction projects and mitigating their impacts will be included as part of the Congestion Management Plan update report scheduled for the first quarter of 2020.

### RECOMMENDATIONS

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The General Manager, Transportation Services and Chief Planner and Executive Director, City Planning recommend that:

1. Infrastructure and Environment Committee receive this report for information.

### FINANCIAL IMPACT

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

The Chief Financial Officer and Treasurer has reviewed and agrees with the financial impact information.

## **DECISION HISTORY**

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City Council at its meeting of July 23, 24, 25, 26, 27 and 30, 2018 requested:

- i. the General Manager, Transportation Services to provide an update on Part 1.a. of Member Motion MM55.29, Taking Back Our Streets - Getting Toronto Moving Again, requesting the General Manager, Transportation Services to consult with the development industry on eliminating the practice of allowing developers to occupy the public right-of-way, and to report to the Public Works and Infrastructure Committee on the feasibility of this proposal in the first quarter of 2019, and
- ii. the Chief Planner and Executive Director, City Planning, in consultation with the General Manager, Transportation Services and the Chief Building Official and Executive Director, Toronto Building, to report to the first meeting of the Planning and Growth Management Committee in 2019 on the feasibility of requiring development applicants to submit a Construction Staging Plan (Construction Management Plan) with their rezoning application.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM44.39>

City Council at its meeting of May 14 and 15, 2019 requested the General Manager in consultation with the City Solicitor to report back to the meeting of June 18 and 19, 2019 on the legal implications of denying all road occupancy permits for developments sites and forcing developers to build on-site.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC7.3>

## **COMMENTS**

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### **Construction and Legal Impact of Eliminating Occupation of the Public Right of Way for Development Purposes**

Following consultation with the development industry, City Planning, Toronto Building and Transportation Services staff do not find it practical or feasible to eliminate the occupation of the public right of way.

In some instances, it is not possible to achieve construction at already constrained sites and/or renovations of buildings that are built to the lot line, without occupying the right of way

The City of Toronto's Official Plan built form policies promote the location and organization of new development to fit with the existing and/or planned context by framing and supporting adjacent streets, parks and open spaces. Achieving these long term development objectives often results in buildings either built to property lines or close to the property lines, including underground levels - all requiring some occupation of the right of way during part of the construction process. Notwithstanding building setbacks for improved streetscapes and sidewalk widenings, which are often achieved in dense conditions, there is no overall opportunity to avoid some occupation of the right of way.

Eliminating the use of the right of way for construction purposes would cause development restrictions, impact construction costs, result in longer development horizons and cause potential health and safety concerns on certain sites.

Even if the City did elect to eliminate the occupation of the public right of way, it would still be utilized, since Paid Duty Officers have the discretionary authority to close all live lanes of traffic during hoisting activities, taking into account wind conditions, size and nature of the load. Further, some types of construction activities would require closure of the lanes for a sustained period that cannot be interrupted. For instance, once pouring of concrete for structural slabs work begins, it cannot be stopped for any reason until it is completed, including the commencement of a rush hour restriction in a permit. This is because concrete slabs must be poured in one continuous effort in order to maintain their structural integrity. Due to the nature of the work, it is challenging to time the pours with off peak traffic periods. This would result in greater disruption to traffic in the area than is experienced during a typical construction staging area.

Also, when a developer requests the use of adjacent public right of way, expanding the size of their construction footprint, and bringing vehicles into the site, they are also attempting to address their obligations as a constructor/employer under Ontario Regulation 213/91 "Construction Projects" pursuant to the Occupational Health and Safety Act.

In preparation of this report, Transportation Services consulted with Legal Services.

As outlined in Chapter 937, Temporary Closing of Highways, the General Manager of Transportation Services has the delegated authority to temporarily close any highway or part of a highway, with the exception of the Don Valley Parkway, the F.G. Gardiner Expressway, W.R. Allen Road, Highway 27 or Black Creek Drive, for a period up to and including 30 days for construction, repairing or improvement work to or above or below the highway. The General Manager is required to notify the impacted ward councillor(s) of the pending closure and, if requested by that councillor, report the matter to the appropriate council committee for decision.

Pursuant to City of Toronto Municipal Code Chapter 27, Council Procedures, unless the authority to temporarily close has already been delegated to the General Manager under certain specified sections of Chapter 937, Community Council has the delegated

authority to make final decisions in relation to temporary road closures on local, collector, and minor arterial roads.

Although the City has no legal obligation to allow developers a temporary road closure and will only do so when the City's criteria are met, the General Manager of Transportation Services, or the City, via Community Council or Council, must act in good faith and base its decision on the merits of the application.

City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, currently provides a process by which every person who wishes to temporarily occupy a street, outside of either street work or a street event, shall apply to the City. No person shall commence or undertake any temporary street occupation unless they have obtained the requisite consents and permits, paid all fees, submitted the requisite financial securities and insurance, entered into the requisite agreement, etc. in accordance with the chapter requirements.

Once the information as required under the chapter has been provided to the satisfaction of the General Manager, the General Manager shall issue the permit specifying the portion of the street and time period when the temporary street occupation will occur, subject to such terms and conditions as the General Manager and the City Solicitor considers appropriate.

Chapter 743, does provide situations where an application for a permit for temporary street occupation may be refused. In these events, the General Manager must provide the applicant with the reasons for the refusal. Chapter 743 provides for an appeal process which requires that the General Manager prepares a report to the relevant council committee describing the reasons for refusing the permit. Upon receipt of the report, the committee shall review the report, provide the applicant with the opportunity to be heard, and may confirm the General Manager's original decision, refer the matter back to the General Manager, with considerations and directions in mind, or direct the General Manager to issue the permit on required terms and conditions.

The General Manager and the relevant council committees are required to act in good faith and base their decision on the merits of the application in accordance with the Chapter requirements.

Transportation Services does not endorse the elimination of the use of the right of way for construction purposes, but is actively seeking ways to reduce the occupation and duration of use of the right of way, including: an update to the City's Congestion Management Plan, Construction Management Plans detailing the impacts of construction on neighbourhoods and mitigation strategies, working with developers to assess construction staging requests to mitigate and address travel pattern, safety and flow concerns as well as overall project duration; parking regulations to accommodate the turning radii of large vehicles, traffic controllers to protect the public, Right of Way Occupancy Permit restrictions and enforcement of permits through Transportation Standards Officers and Police Officers.

## **Feasibility of requiring developers to submit a Construction Staging Plan (Construction Management Plan) with a rezoning application.**

City Planning has consulted with Transportation Services and Toronto Building to look comprehensively at the appropriate timing of requiring the submission of a Construction Management Plan and the ability to secure a Construction Management Plan.

There are multiple key stages in the review of development projects, including Zoning By-law Amendments, Site Plan Agreements, Building Permits and Right of Way Occupancy Permits. There is an advantage to receiving some preliminary construction details at the rezoning stage, and City Planning will examine adjusting existing requirements at the rezoning stage to have applicants provide some preliminary construction project details to assist staff in forecasting potential construction impacts and communicating key details to the community earlier in the development process. The terms of reference for the Transportation Impact Study and, where applicable, the Housing Issues Report, will be amended to require that these reports address preliminary construction management considerations including: a description of the proposed development and construction project overview, describing typical impacts of a proposal of this nature on the surrounding community and City's right of way; initial construction timing and phasing considerations; and a construction communication and engagement strategy.

City Planning considers the Site Plan Control process to be the most appropriate point to secure the Construction Management Plan. At earlier stages of the development process, there may be insufficient detail or certainty about a construction project for applicants to establish a full understanding of potential construction impacts and mitigation strategies.

Site Plan Agreements provide a mechanism for the City to secure the requirement for a Construction Management Plan. Changes to Ontario's Planning System through Bill 108, to be implemented, have restricted the City's ability to enter into an agreement for a legal convenience at the rezoning stage, specifically through Section 37 of the Planning Act. Without Section 37 Agreements to secure Construction Management Plans at the rezoning stage, the Site Plan Agreement represents the more appropriate and feasible time to secure Construction Management Plans in the development process.

The requirement for the provision of Construction Management Plans at the Site Plan stage is also consistent with existing City practices and current policy. The recently modified OPA 405 – Yonge Eglinton Secondary Plan, as approved by the Province, includes a requirement for Construction Management Plans as a part of the Site Plan Control process for development in Mixed Use Areas and Apartment Neighbourhoods (Policy 9.7.1).

Official Plan Schedule 3 identifies the information and studies required for a complete rezoning application. A City-initiated Official Plan Amendment would be required to

introduce Construction Management Plans as a further requirement for a complete application at the rezoning stage. City Planning does not endorse pursuing such an amendment at this time.

Therefore in order to address potential disruptions to the surrounding area and ensure appropriate and complete information is provided to the City and the neighbours of the development site, Construction Management Plans will continue to be required as part of the Site Plan Control process, where appropriate. Figure 1 illustrates the increasing levels of detail for each application stage, vis-à-vis construction impacts, mitigation measures and how these are communicated.

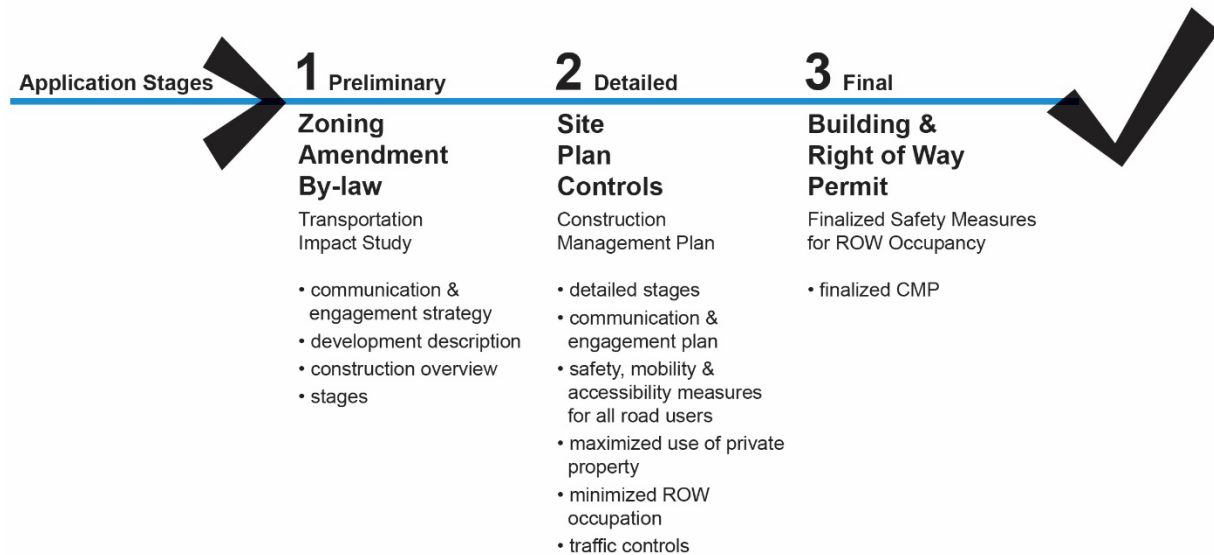


Figure 1. Construction Impact Submission Timeline

## Next Steps

Transportation Services is currently working on an update to the Congestion Management Plan, scheduled to be presented to committee in 2020. As part of this report, an additional review of the impact of construction on traffic and road safety will be conducted.

## CONTACT

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## SIGNATURE

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