

## Overnight Snow Clearing on Commercial Properties

**Date:** March 9, 2021

**To:** Infrastructure and Environment Committee

**From:** Executive Director, Municipal Licensing and Standards

**Wards:** All

### SUMMARY

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At its meeting on March 11, 2020, the Infrastructure and Environment Committee (IEC) directed the Deputy City Manager, Infrastructure and Development Services to report back on the feasibility of prohibiting snow clearing activity within commercial properties located 100 metres or less from residential areas between 12 am and 6 am. The Committee directive is a result of resident concerns about noise.

Staff do not support prohibiting overnight snow clearing activity within commercial properties near residential areas. Using the Noise Bylaw (Toronto Municipal Code, Chapter 591, Noise) to regulate snow clearing activity and equipment may undermine what is intended to be a straight-forward exemption for safety and accessibility reasons. It is recommended that this report is received for information and that educational information and/or mediation services are offered to residents when there are continued complaints about noise made in connection with snow clearing. The report also provides an update on the review of the Noise Bylaw.

The Noise Bylaw exempts snow clearing activity and equipment to ensure it does not conflict with snow clearing requirements in Toronto Municipal Code Chapters 719, Snow and Ice Removal and Chapter 629, Property Standards. Both chapters require the removal of snow within specified time limits to ensure the safety and accessibility of the city after snow fall.

People have a right to safely and easily navigate their environment. A prohibition on overnight snow clearing may unintentionally create barriers for people with disabilities as it may impede their access to commercial properties as customers and employees. This is contrary to the intent of the Accessibility for Ontarians with Disabilities Act (AODA) and the City's Multi-Year Accessibility Plan.

Due to the potential accessibility implications of the IEC directive, staff presented at the February 10, 2021 meeting of the Toronto Accessibility Advisory Committee (TAAC). The presentation outlined staff's recommendation against a prohibition of overnight snow clearing on commercial properties and sought input from TAAC members. TAAC

members expressed support for this recommendation and did not support a prohibition, as nuisance concerns should not outweigh concerns for safety and accessibility. To further demonstrate this, TAAC adopted a motion to communicate their support of staff's recommendation to IEC.

The most practical time to clear snow and ice from property is generally overnight when areas are free of people and vehicles. Overnight snow clearing recognizes that Torontonians require safe passage at any time of day. For example, timely snow removal is critical for Toronto's frontline workers who are more likely to work outside of the 9 am to 5 pm work day. Prohibiting overnight snow clearing on commercial properties may present an equity challenge as it is well documented that racialized workers and women are over-represented in frontline industries, such as food handlers, grocery clerks and cleaners.

In addition, prohibiting snow clearing overnight for commercial properties located 100 metres or less from residential areas may effectively ban the activity due to the large number of commercial properties and the mixed use design of the city. Commercial properties include offices, medical facilities, retail establishments, hotels, commercial condominiums, etc., and are often located near residential areas for convenience and ease of access.

This report was written in consultation with the People and Equity Division, Transportation Services, City Planning and Legal Services.

## **RECOMMENDATIONS**

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The Executive Director, Municipal Licensing and Standards recommends that:

1. The Infrastructure and Environment Committee receives this report for information.

## **FINANCIAL IMPACT**

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There are no current or known future year financial impacts arising from the recommendations contained in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

## **EQUITY STATEMENT**

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Prohibiting overnight snow clearing on commercial properties near residential areas may have the unintended consequence of hindering the safe mobility of seniors, people with disabilities, and racialized workers who are over-represented in low-wage and frontline industries.

As outlined in the section "Key Issues", the City's current approach to snow clearing, which permits overnight work, recognizes the importance of timely snow removal and prioritizes the safety and accessibility of Torontonians.

## **DECISION HISTORY**

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On February 10, 2021, the Toronto Accessibility Advisory Committee communicated its support to the Infrastructure and Environment Committee for staff's preliminary recommendation against prohibiting overnight snow clearing on commercial properties within 100 metres of residential areas.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.DI13.2>

On March 11, 2020, the Infrastructure and Environment Committee directed the Deputy City Manager, Infrastructure and Development Services to report to the Infrastructure and Environment Committee on September 22, 2020 on the feasibility of prohibiting snow clearing activity within commercial properties located 100 metres or less from residential areas between 12 a.m. and 6 a.m.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.IE12.16>

On April 16, 2019, City Council adopted a new Noise Bylaw, effective October 1, 2019, which included new and updated definitions, quantified noise level limits for amplified sound and motorcycles, a new unreasonable and persistent noise provision and a more streamlined exemption permit process. City Council directed staff to report back in the fourth quarter of 2020 on the implementation, success and outstanding issues of these changes.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EC3.6>

## **COMMENTS**

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### **How is Snow Clearing Regulated?**

Snow clearing is municipally and provincially regulated. Under the Toronto Municipal Code, snow clearing is regulated by Chapter 719, Snow and Ice Removal and Chapter 629, Property Standards. Both chapters require the removal of snow and ice within specified time limits to provide safe and uninterrupted access and egress for people and vehicles. For example:

- Chapter 719, Snow and Ice Removal, requires that snow and ice be removed from City sidewalks by building owners and occupants within 12 hours of a snowfall; and
- Chapter 629, Property Standards requires that snow and ice be cleared from steps, landings, walks, driveways, parking spaces, ramps and similar areas on private property by building owners and occupants within 24 hours.

To ensure the Noise Bylaw (Chapter 591, Noise) does not conflict with these chapters, snow and ice clearing activity and equipment is exempted.

Under provincial legislation, the City of Toronto must maintain minimum maintenance standards for the public right of way, including the removal of snow and ice, to ensure the safe passage of residents. The City of Toronto Act, 2006 (s. 42(1)) provides that a municipality must keep its highways "in a state of repair that is reasonable in the circumstances". The Act further outlines (under Ontario Regulation 612/06) minimum maintenance standards in relation to winter activity, including:

- (a) Patrolling, s.3
- (b) Weather Monitoring, s. 3.1
- (c) Snow accumulation, roadways, s. 4 and s. 4.1
- (d) Snow accumulation, bicycle lanes, s.4.2 and s. 4.3
- (e) Ice formation, roadways, s.5 and s. 5.1
- (f) Snow accumulation, sidewalks, s.16.3 and s. 16.4
- (g) Ice formation, sidewalks, s.16.5 and s. 16.6
- (h) Winter sidewalk patrol, s.16.7
- (i) Declaration of significant weather event, s.16.9

The City meets provincial obligations to clear snow and ice on the public right of way by delivering a winter operations program with 24-hour patrolling (that continuously checks road conditions) and staff who frequently monitor weather forecasts and pavement temperature.

To ensure that snow and ice is cleared in a timely manner, Council has approved Levels of Service for winter maintenance based on snow accumulation and time, for all classes of road types. As a result, the City's winter maintenance operations meet or exceed the province's minimum maintenance standards.

## **Research and Consultations**

### **Public and Stakeholder Feedback**

Given the current physical distancing requirements and restrictions on gathering limits, staff designed a virtual approach to stakeholder consultations. Staff asked for written e-mail submissions within a two-week period (January 18 - 29, 2021) from targeted stakeholders, such as the Toronto Noise Coalition and Landscape Ontario. Information about the review, as well as how to submit feedback, was also advertised on the City's noise webpages for the public.

Staff received a submission from the Toronto Noise Coalition and six emails from members of the public, all supportive of prohibiting overnight snow clearing within commercial properties. The following summarizes the feedback that was received:

- Concerns were expressed about the bulk relocation of snow, because of the use of construction-class vehicles that require heavy-duty engines and audible back-up beepers.
- Some suggested that a ban on overnight snow clearing within any large property with a parking lot (such as a multi-residential building, school, government building or commercial property) should be considered due to the noise disruption to residents.

- It was highlighted that a ban on overnight snow clearing should be considered for private residential properties, specifically for mechanical equipment (such as snow blowers or snow plows) rather than manual equipment (such as shovels).
- Some supported broader time restrictions, such as from 11 pm to 7 am.

Landscape Ontario, a horticultural trades association who represents snow clearing companies, does not support a prohibition. They believe that snow clearing is an emergency service and is necessary for the safety of residents. They also noted that, if the snow clearing company is a member of their association, they may offer to mediate issues between residents and snow clearing companies.

Due to potential business and accessibility implications, staff virtually met with members of the Toronto Association of Business Improvement Areas (TABIA) and presented at the Toronto Accessibility Advisory Committee (TAAC).

TABIA members were not supportive of prohibiting overnight snow clearing within commercial properties near residential areas. Their main concern was practicality, as they noted that many commercial properties would be unable to clear snow prior to businesses opening. This would cause safety and accessibility concerns for both their customers and employees.

TAAC members do not support the prohibition. Members stressed that nuisance concerns should not outweigh safety and accessibility concerns. People with disabilities have a right to safely navigate the city and a prohibition on overnight snow clearing would significantly limit their ability to do so. As such, TAAC members adopted a motion to communicate their support of staff's recommendation to IEC.

## **Complaints**

MLS provides bylaw administration and enforcement services, including the enforcement of snow clearing on private property. Snow clearing on the public right of way (such as sidewalks) is the responsibility of Transportation Service's Right of Way Management. While MLS is responsible for the enforcement of the Noise Bylaw, noise complaints about snow clearing are not tracked as snow clearing is exempted.

The number of complaints related to failure to clear snow on private property within 24 hours is noted in Table 1. In the past three years, MLS received 110 to 418 complaints per year, for a total of 650 complaints. In 2019, the number of complaints was higher than expected (418) due to a higher level of snowfall.

**Table 1: Annual Number of Complaints - Failure to Clear Snow on Private Property within 24 Hours**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>
<b>Number of Complaints</b>	122	418	110	650

Of the complaints noted in Table 1, approximately 12 percent resulted in orders to comply. An order to comply is an enforcement mechanism used by Bylaw Enforcement Officers to provide details of the violation and a length of time for the violation to be rectified.

**Key Issues: Accessibility, Safety and the Mixed Use Design of Toronto**

Staff do not support prohibiting snow clearing within commercial properties located 100 metres or less from residential areas between 12 am and 6 am. A prohibition may cause safety and accessibility concerns, and may conflict with existing City and provincial regulations and strategies.

**Accessibility**

The purpose of the Accessibility for Ontarians with Disabilities Act (AODA) and the Integrated Accessibility Standards Regulation (IASR) is to identify, remove and prevent barriers for people with disabilities. This commitment has been confirmed by Council through the adoption of the City's Multi-Year Accessibility Plan (MYAP). The MYAP outlines outcomes and initiatives that reaffirm the City's commitment to an accessible city and to building an equitable and inclusive society that values the contributions of people with disabilities.

Timely snow clearing is essential for the daily living needs of all Torontonians, but particularly for those who may be unsteady, use mobility aids and devices (e.g., wheelchairs, scooters, walkers, canes, crutches), rely on a service animal, use strollers or personal grocery carts. People with disabilities frequent commercial properties both as customers and workers. Impeded access has potential implications for the independence, employment and livelihood of people with disabilities and seniors.

Any limitations on snow and ice clearing may result in unintended consequences that conflict with initiatives of MYAP. Under Initiative 55 of the MYAP, Council has directed staff to conduct a review of snow clearing policies, practices and procedures using an accessibility and equity analysis. The aim of this initiative is to develop a strategy to reduce barriers that significantly limit the mobility of people with disabilities (for example, improve snow clearing across the city). Transportation Services is leading this work and has already introduced several initiatives, including a snow clearing program for seniors and persons with disabilities, and a sidewalk snow clearing trial in areas of the City that are not typically cleared (using new and smaller mechanical equipment). While these

initiatives are not undertaken on commercial properties, they are reliant on overnight and early morning snow clearing.

## **Safety**

Overnight snow clearing is needed to ensure all Torontonians travel to and from commercial properties and their workplaces and homes in a safe manner, at any time of day.

The most practical time to clear snow and ice from property, particularly commercial properties, is generally overnight or early morning when areas are free of people and vehicles. It ensures that property owners are able to clear snow and ice within the City's time constraints of 12 hours (for sidewalks) and 24 hours (for private property). Similarly, the City's winter maintenance program occurs at any time of day, to ensure that provincial requirements and Council's winter maintenance Levels of Service are met.

Overnight snow clearing recognizes that residents travel and businesses operate at different hours of the day and therefore, require safe passage at any time of day. For example, timely snow removal is critical for Toronto's frontline workers who are more likely to work outside of the 9 a.m. to 5 p.m. work day. Prohibiting overnight snow clearing on commercial properties may present an equity challenge as it is well documented that racialized workers and women are over-represented in frontline industries, such as food handlers, grocery clerks and cleaners.

In addition, failure to clear snow in a timely manner may create barriers for seniors to safely travel to and access commercial properties, particularly if there is insufficient clearance for wheelchairs, scooters and other mobility devices for seniors with disabilities. This is particularly concerning during the COVID-19 pandemic when seniors are asked to visit commercial properties, such as grocery stores, in the early mornings before businesses open to the broader public.

Prohibiting overnight snow clearing may conflict with Toronto's commitment to be an age-friendly city, formalized in 2013 when Council unanimously adopted the Toronto Seniors Strategy: Towards an Age-Friendly City, and in 2016, when the World Health Organization recognized Toronto as an Age-Friendly City. In 2018, Version 2.0 of the Seniors Strategy was adopted by Council. The Seniors Strategy recognizes that the age structure of Toronto's population is shifting, as the share of the population over the age of 65 increases and is projected to grow to 21.2 percent by 2041. Consultations with over 10,000 Torontonians for the development of the Strategy heard frequently that "sidewalk and road repair, including the need for the City to repair uneven sidewalks and improve snow removal" was a foremost concern for seniors and caregivers.

## **Mixed Use Design of Toronto**

The term commercial property is not defined in Zoning Bylaw 569-2013. Commercial properties include offices, medical facilities, retail establishments, hotels, commercial condominiums, etc. They may also include industrial uses or institutional uses such as schools or places of worship. Regardless of how a commercial property is defined, the

majority of properties commercially zoned or used commercially are in close proximity to residential areas. This is often by design, as commercial services are located near residential areas for convenience and ease of access.

In Attachment 1, two maps demonstrate the extent of the geographic impact that a prohibition on overnight snow clearing would have. The first map shows that the City's commercial zones (CL, CR and CRE Zones) are found over a wide and diverse range of the geography of the city of Toronto. It also shows that most of these, if not mixed commercial residential zones, are located within close proximity or adjacent to residential zones. The second map shows only the commercial zones that are not within 100 metres of a residential zone, a small subset of the commercial zones in the city, and mainly concentrated in the downtown core. Prohibiting snow clearing on a commercial property within 100 metres of a residential property may effectively ban snow clearing overnight in a high proportion of the city.

Access to commercial services should not be delayed or impeded due to snow clearing, particularly when many of these services are essential for local residents.

## **How Does the City Respond to Noise Complaints About Snow Clearing?**

While a prohibition on snow clearing is not supported, staff are aware of nuisance issues. When MLS receives noise complaints about snow-clearing, a key component of the compliance approach is education and mediation services.

### **Education**

When Bylaw Enforcement Officers are made aware of noise complaints in relation to snow clearing, they inform complainants of the exemption, including why it exists (that is, for safety and accessibility reasons). The exemption is also noted on the City's Noise webpage. Next, they may ask whether the resident has spoken to those who are responsible for making the noise, as this provides the owner or occupant with an opportunity to correct the issue. As a best practice, officers may also connect with those who are clearing snow to determine if there is a reasonable solution to the noise complaint, such as an alternative time to clear snow, an alternative snow-clearing pattern starting farther away or closer to residents depending on the timing and/or the use of an alternative and quieter piece of equipment. If this is not feasible, Bylaw Enforcement Officers may suggest mediation.

### **Mediation**

Mediation is often the most relevant and/or feasible course of action for noise complaints about snow clearing. Mediation is a form of alternative dispute resolution in which two individuals or groups resolve a dispute with the help of a neutral third party who serves as a mediator. It can be a particularly useful tool in situations where there is no further action a Bylaw Enforcement Officer can take due to the absence of a bylaw violation, or a minor issue that does not warrant further City involvement. While mediation cannot solve all disputes, it provides communication strategies to neighbours (including commercial property owners/occupiers), presents an opportunity to determine a reasonable solution, allows clients to feel heard and may prevent future disputes.

Mediation is also confidential and independent of any related legal processes: in this way, parties can feel free to share any information that might help them reach an agreement, but not fear that this information would be used against them in a subsequent enforcement process.

In 2018, MLS established a partnership between the City and a community partner for a mediation referral program. Noise is a focus area of the program, as these issues often involve disputes between neighbours. There is no cost to the City for the operation of the mediation program and the program is free for participants.

### **Next Steps**

Staff do not support prohibiting snow clearing within commercial properties located 100 metres or less from residential areas between 12 a.m. and 6 a.m. It is recommended that education and mediation services continue to be the predominant compliance tools for noise complaints made in relation to snow clearing. Imposing time-bound restrictions on snow clearing activity conflicts with existing City regulations and strategies that focus on safety and accessibility.

### **Update: Noise Bylaw Review**

The Noise Bylaw was comprehensively reviewed between 2015 and 2019. Prior to this review, the bylaw had not been reviewed since 2002.

The Noise Bylaw review included a Noise Working Group (convened with stakeholders from resident associations, business improvement areas, the music and entertainment industry and the construction and building industry), a technical review of the bylaw by a third-party engineering firm, broad and statistically significant public opinion research, and third-party hosted public consultation meetings.

Toronto City Council adopted amendments to the bylaw at its meeting on April 16 and 17, 2019. The amended bylaw came into effect on October 1, 2019 and included:

- New and updated definitions to improve clarity and consistency in the interpretation of the bylaw.
- Quantified noise level limits for amplified sound and motorcycles to enhance objectivity.
- Introduction of an “Unreasonable and Persistent Noise” provision to be applied only when noise is not captured by a specific prohibition, and
- A more streamlined exemption permit process, with the ability to revoke permits and impose conditions when necessary, including submission of a noise mitigation plan.

In addition to the amended bylaw, a new dedicated noise enforcement team was created to position MLS to effectively respond to noise issues and achieve better enforcement outcomes. Noise is a significant issue and concern for residents across Toronto. It is consistently one of the top requests for service the division responds to, and staff heard from many stakeholders during the Noise Bylaw review about a desire for improved enforcement. The dedicated noise team consists of 24 officers, and handles all noise service requests, with the exception of animal noise (responded to by Toronto Animal Services). The team provides coverage seven days a week, from 6 a.m. to 2 a.m. and has adopted a priority response model, with incoming service requests being assigned different priorities according to urgency, frequency and impact. The priority levels have different service standards, which helps manage expectations and ensures officers are more responsive to higher priority issues.

### **Effects of the COVID-19 Pandemic**

As part of the City's efforts to protect the health and safety of Toronto's residents and businesses, non-emergency bylaw enforcement and investigation services for noise service requests were suspended between March 17 and July 21, 2020. Non-emergency bylaw enforcement staff were redirected to support a joint operation with Toronto Public Health and the Toronto Police Services to ensure compliance with provincial emergency orders and the City's physical distancing bylaw. Although noise enforcement and investigation services have resumed, the City's Bylaw Enforcement Officers continue to support enforcement related to the pandemic.

As part of the Government of Ontario's response to the COVID-19 pandemic, the provincial government has limited the City's authority to regulate or prohibit noise made in connection to construction and deliveries.

The Government of Ontario has extended the permitted hours of construction work for essential construction projects. Construction related to the healthcare sector is allowed 24 hours a day, while other permitted construction activity is allowed from 6 a.m. to 10 p.m., seven days a week (inclusive of Statutory Holidays). The provincial emergency order restricts the City's power to prohibit or regulate noise made in connection to construction and is in effect until October 7, 2021, unless revoked earlier.

To ensure the delivery of goods to businesses and consumers during the pandemic, the Government of Ontario issued an emergency order permitting the delivery of goods 24 hours a day. The provincial order is in effect until September 19, 2021, unless revoked earlier. Due to the absence of a definition for "goods", it is arguable that the City's Noise Bylaw cannot be applied to the movement of anything from A to B while this Regulation remains in force. A narrower limit on the City's authority (Bill 215, Main Street Recovery Act, 2020), which applies only to noise made in connection with the delivery of goods to retail business establishments, restaurants including cafes and bars, hotels and motels and goods distribution facilities, has received royal assent, but has not yet been proclaimed. Therefore, the emergency order remains in effect.

Staff are expected to review the new bylaw, including its implementation, success and outstanding issues at a later date. The evaluation of the new bylaw has been affected by the redirection of enforcement staff during the pandemic, and by the limits placed on the City's authority to regulate construction and delivery noise.

## **CONTACT**

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## **SIGNATURE**

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Carleton Grant  
Executive Director, Municipal Licensing and Standards

## **ATTACHMENT**

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Attachment 1 - The Geographic Impact of Prohibiting Overnight Snow Clearing Within Commercial Properties