

Supplementary Report – Metrolinx Response to City's Fair Wage Policy Request

Date: June 15, 2022

To: City Council

From: Executive Director, Transit Expansion Office

Wards: All

SUMMARY

On June 8, 2022, Executive Committee considered *EX33.1 – Metrolinx Transit Expansion Projects – Second Quarter 2022* which provided information on the City's Fair Wage Policy and its application to Metrolinx, when Metrolinx's agrees to deliver Additional Infrastructure on the City's behalf.

Executive Committee directed City staff to continue discussions with Metrolinx on the application of the City's Fair Wage Policy requirements under City of Toronto Municipal Code Chapter 67, Fair Wage, Schedule A – Fair Wage Policy, on the following three transit projects: the Subways Program, the Light Rail Transit (LRT) Program, and the GO Expansion Program, and report directly to the June 15 and 16 meeting of City Council on the outcome of these discussions.

City staff have continued discussions with Metrolinx to better understand Metrolinx's position on the City's request to abide by the City's Fair Wage Policy in respect of work it undertakes for the City (referred to as Additional Infrastructure). Metrolinx has indicated that it complies with all legislation that applies to it as a Crown Agent including employment legislation such as the *Employment Standards Act*. Metrolinx has not committed to abiding by the City's Fair Wage Policy for Additional Infrastructure.

As discussed in this report, the construction industry is heavily unionized and the City's Fair Wage rates are set in accordance with prevailing union rates thereby making discrepancies unlikely. It should also be noted that Metrolinx has agreed to require that their contractors do not contravene the City's labour trades contractual obligations when Metrolinx agrees to take on Additional Infrastructure work on behalf of the City.

FINANCIAL IMPACT

There are no financial impacts associated with this report for information. The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On June 8, 2022, Executive Committee considered *EX33.1 – Metrolinx Transit Expansion Projects – Second Quarter 2022* which provided information on the City's Fair Wage Policy and its application to Metrolinx, when Metrolinx's agrees to deliver Additional Infrastructure on the City's behalf.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.EX33.1>

COMMENTS

As part of the City's ongoing negotiation with Metrolinx and the Province of Ontario on various transit expansion agreements related to the Subways, LRT and GO Expansion Programs, City staff worked extensively to try to secure Metrolinx's agreement to abide by the City's Fair Wage Policy when delivering Additional Infrastructure. Additional Infrastructure is work that the City requests Metrolinx deliver on its behalf, at the City's cost to facilitate effective construction coordination and to reduce the duration, frequency and depth of impact on communities during construction of their transit projects. Metrolinx has sole discretion to accept the City's request to deliver Additional Infrastructure as part of their contracts.

Additional Infrastructure work typically is adjacent to, nearby, or within Metrolinx's zone of influence for their transit projects. The City only uses the Additional Infrastructure process when absolutely necessary when delivery by the City is inefficient.

Metrolinx has not committed to abiding by the City's Fair Wage Policy for Additional Infrastructure, and has stated to the City that it complies with all legislation that applies to it as a Crown Agent, including employment legislation such as the *Employment Standards Act*.

As previously reported to Executive Committee, there are potential negative implications for the City, should Metrolinx not deliver Additional Infrastructure on the City's behalf. These include, but are not limited to:

- Creating ineffective construction coordination and may require the City to interface with Metrolinx's contractors directly in the same vicinity;
- Delaying crucial capital work;
- Requiring multiple construction disruptions in short succession thereby impacting the same local residents, businesses and streets, and extending disruption to traffic in the same area for a longer duration; and,

- Potentially increasing the pricing for the work in question due to the inefficiency caused by tendering separately rather than through one contract.

At the direction of Executive Committee, City staff continued discussions with Metrolinx on the City's Fair Wage Policy. In response, Metrolinx reiterated that it complies with all legislation that applies to it, including employment legislation such as the *Employment Standards Act*.

Provincial Labour Legislation

The Province's *Employment Standards Act* (ESA) is provincial legislation that sets out minimum standards for a broad range of workplace issues and working conditions. The ESA covers a broad range of workplace rights that are far beyond the scope of the City's Fair Wage Policy.

The provisions of the ESA are statutory minimums. The ESA forms an important legislative backdrop for the rights of workers, including more highly paid workers, by stipulating certain rights and working conditions such as minimum vacation and/or vacation pay, maximum hours of work daily and weekly, statutory holidays, overtime pay, pregnancy and parental leave, family and caregiver leave and other forms of leave, notice of termination and severance pay and protections against reprisal for enforcing these various rights. The ESA includes many industry specific provisions that serve to address the unique characteristics and needs of various industries.

City's Labour Trade Obligations

The City's Fair Wage Policy is separate and distinct from the City's legal obligations to various construction unions. The City is bound to nine collective agreements in the Industrial, Commercial, and Institutional sector (ICI) of the construction industry. The City is also bound to the ironworkers in the heavy engineering sector. Metrolinx has agreed to require that their contractors do not contravene the City's labour trades contractual obligations when Metrolinx agrees to take on Additional Infrastructure work on behalf of the City.

It is worth noting that a great deal of construction work performed under Metrolinx contracts is likely performed by unionized workers as much of the construction industry is unionized. Although Metrolinx is not-unionized as a construction employer the way the City is, a significant amount of 'large-scale' construction work in the greater Toronto area is performed by unionized workers. To the extent that Metrolinx contracts are awarded to unionized contractors and the majority of work on the projects is performed by unionized workers, it is unlikely that there would be widespread or significant 'Fair Wage' issues that would arise on these projects. It should also be noted that the City's Fair Wage rates for the construction industry are set in accordance with prevailing union rates.

Building Transit Faster Act (BTFA)

In addition, pursuant to certain provisions in the BTFA, Metrolinx can, on notice, require the following for construction of a priority transit project:

- Use, occupation, modification, temporary closure of a municipal highway or “municipal right of way”; and
- Use of, access to or modification of sewage works, water works or fire hydrants under municipal ownership or control, and “municipal services” related to this infrastructure.

Under BTFA, the Province requires Metrolinx to make reasonable efforts to reach agreement with the municipality for the municipal service and right of way access. If Metrolinx and the municipality are not able to agree on the terms even though Metrolinx made reasonable efforts to reach agreement, the Minister of Transportation may develop a municipal service and right of way order. The order may require the municipality to provide the municipal service and right of way access set out in the order, and set terms governing Metrolinx and the municipality in respect of the municipal service and right of way access.

In addition, through BTFA, anyone carrying out work within Metrolinx's transit corridor lands, including the City of Toronto, also requires approval from Metrolinx through a Corridor Development Permit (CDP). Without a CDP, work within these lands is prohibited.

Without Metrolinx's delivery of Additional Infrastructure, should the City have to deliver these capital projects itself, Metrolinx could take control of City lands required to deliver their work through a Minister's Order, if these lands are required for a Metrolinx transit project, and/or Metrolinx could reject the City's CDP application, thereby not allowing the City to undertake this work.

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SIGNATURE

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