

Safety Policies and Enforcement Measures to Prevent Driver Distractions From Protests and Rallies at 400-Series Overpasses

Date: January 30, 2024

To: City Council

From: General Manager, Transportation Services; City Solicitor

Wards: All Wards

SUMMARY

This report provides responses to IE10.7 - Highway 401 Overpass Safety, which was referred to the City Solicitor and the General Manager, Transportation Services by the Infrastructure and Environment Committee on January 9, 2024 to report to Council at its February 6, 7, and 8, 2024 meeting on various safety policies and enforcement measures related to protests and rallies at bridges and overpasses. This report was prepared after reviewing relevant policies, procedures, legislation, and case law.

RECOMMENDATIONS

The General Manager, Transportation Services and the City Solicitor recommend that:

1. City Council receive this report for information.

FINANCIAL IMPACT

There is no financial impact arising from the information contained in this report.

DECISION HISTORY

At its meeting on January 9, 2024, the Infrastructure and Environment Committee, considered and forwarded to City Council without recommendations, item IE10.7 - Highway 401 Overpass Safety.

[Agenda Item History - 2024.IE10.7](#)

COMMENTS

Protest Management

During a public protest, especially during large gatherings, Transportation Services takes on several roles, which include, assisting with public safety, cleaning the right-of-way of any garbage and debris on the road following the disbandment of the protest and removal of other materials such as banners that are unsafely placed which could be a hazard to pedestrians, cyclists or motorists.

Where a protest occupies a portion or an entire area of the street, Transportation Services, in conjunction with Police activities, may deploy various traffic control equipment to ensure the safety of protesters and the general public. Traffic control equipment can include signage, portable vehicle message boards (PVMP), fencing, and other methods of preventing potentially dangerous vehicle access to the protest area.

Charter of Rights and Freedoms

Legislation and enforcement must comply with the *Canadian Charter of Rights and Freedoms* (“*Charter*”)

The *Charter* identifies the following among the guaranteed fundamental freedoms:

- freedom of thought, belief, opinion and expression;
- freedom of peaceful assembly; and
- freedom of association.

All levels of government, the police and City staff are legally obligated to respect *Charter* protected rights and freedoms. As such, legislation, by-laws, policies, practices and enforcement activities that are alleged to result in an infringement of those fundamental freedoms may be challenged in the courts.

An allegation of infringement will only be upheld if the impugned activity or expression actually falls within the protected right and if the infringement does not pass the justification test set out in section 1 of the *Charter*.

Legal staff will assist staff in determining what enforcement actions can be justified under the *Charter* based on the particular facts in each situation.

Addressing Driver Distraction

The City may rely on enforcement options provided in this report in order to prevent or minimize certain driver distractions. For example, where City staff conclude that an activity related to protests and rallies on a highway (including a sidewalk) is posing a safety hazard to pedestrians, cyclists and motorists, the City may:

- Enforce existing by-laws that prevent the erection of banners that present a danger to health or safety and the obstruction of a street;
- Enforce the *Trespass to Property Act*; and/or
- Seek an injunction to restrain any person from continued violation of a City by-law or law.

Additionally, the City may determine that a highway or a portion of a highway must be closed.

Banners and Obstruction

Chapter 743, Streets and Sidewalks, Use of (“Chapter 743”), regulates and limits many activities on City streets and sidewalks. Sections of Chapter 743 directly address the installation of banners on or across City Streets, as well as, conduct on streets that obstructs, encumbers, damages, or fouls a street.

A person who breaches the above provisions of Chapter 743 may be charged with an offence, which is enforced pursuant to the *Provincial Offences Act*. Upon conviction, a presiding judicial officer may impose a fine of no more than \$5,000.

Closing of Highways

The City may also determine that in certain circumstances a highway, including a sidewalk, must be closed. City Council has delegated the authority to temporarily close highways for street work and certain community purposes to the General Manager, Transportations Services as well as more generally to Community Councils for certain road classifications excluding major arterials and expressways.

The Toronto Police Service also has authority to close highways under the *Highway Traffic Act* and does not require the City’s authorization or input to do so.

Trespass to Property Act

As owners and occupiers of municipal properties, the City can also elect to use the trespass to property powers to prohibit a person from engaging in certain activities on its properties or to prohibit the entry on a portion of the land. A breach of a trespass notice issued under the *Trespass to Property Act* may result in a fine of up to \$10,000 upon conviction.

The effectiveness of the *Trespass to Property Act* as a tool in public spaces is highly dependent on the facts of the situation.

Civil Remedies

The City may seek an injunction by applying to the Superior Court pursuant to section 101 of the *Courts of Justice Act* and/or section 380 of the *City of Toronto Act, 2006*. If the City was successful in the application, the Court would issue an order restraining a person from continuing to contravene a provision of a by-law or law.

Jurisdictional responsibilities and roles

The 400-series highways, ramps, and overpasses fall primarily within the jurisdiction of the Province of Ontario. While the Province owns the physical highways and overpasses, agreements with the City clarify the City's responsibilities for the on-going maintenance of the road surface and sidewalks, summer and winter road repairs and snow removal. Major works are undertaken by the Ministry of Transportation.

Toronto does have the power to pass by-laws concerning conduct of traffic on overpasses or behaviours on, and maintenance of, road surfaces. Examples of those by-laws have been discussed above.

Legislating broader activities on 400-series highways, including the means of access to and egress from highways falls primarily to the Provincial government. For example, during the COVID-19 pandemic, the Province used the *Emergency Management and Civil Protection Act* to issue orders addressing protests that posed public health and safety concerns. In response to increasing protests at hospitals and other health care facilities, as well as at international border crossings and highways, the Province issued Ontario Regulation 71/22: Critical Infrastructure and Highways, which prohibited numerous activities around critical infrastructure. Ontario Regulation 71/22 was revoked on April 15, 2022.

Enforcement on the means of access and egress and on the road surface of 400-series highways falls to the Ontario Provincial Police and the Toronto Police Service. In addition to enforcement under specific Provincial legislation, the Toronto Police Service have reported publicly that charges under the *Criminal Code of Canada* have been laid in relation to protests on the Avenue Road overpass. Toronto Police have indicated that charges of mischief and obstructing a peace officer were laid at one of the protests. The *Criminal Code* creates several offences related to protests including breach of peace and offences related to unlawful gatherings. The *Criminal Code* provisions are established by the Government of Canada and enforced by local and provincial police services.

Enforcement of offences under City by-laws or the above Provincial or Federal statutes would fall to various enforcement agencies. However, effective and safe enforcement would need to consider the circumstances of any situation and the operational capabilities of each level of law enforcement personnel. Under the *Police Services Act*, the duties of a police officer include: preserving the peace, preventing crimes and other offences, apprehending criminals and other offenders, laying charges, and enforcing municipal by-laws. By virtue of their legislative authorities, police officers are provided with wider powers of enforcement than Municipal Enforcement staff and are better trained and equipped to address potentially unlawful conduct at such events.

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SIGNATURE

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