

Encroachment Appeal - Permission to Repair, Restore and Maintain Existing Underground Areaways - 113 Yonge Street (6 Adelaide Street East)

Date: June 19, 2025

To: Toronto and East York Community Council

From: Director, Permits and Enforcement, Transportation Services

Wards: Ward 13 - Toronto Centre

SUMMARY

This staff report is about a matter for which Community Council has delegated authority from City Council to make a final decision.

Transportation Services has reviewed a request from the property owner to repair, restore and maintain various existing underground areaways that are connected to the building at 113 Yonge Street, which encroach within the Adelaide Street East public right-of-way.

The purpose of this report is to request authority to enter into an encroachment agreement with the owner of the building to permit the repair, restoration and maintenance of the existing areaways.

RECOMMENDATIONS

The Director Permits and Enforcement, Transportation Services recommends that:

1. Toronto and East York Community Council authorize the City to enter into an encroachment agreement (the "Agreement") with the property owner(s) of the premises which is municipally known as 113 Yonge Street (collectively, the "Owner") to permit the owner to repair, restore and maintain various existing underground areaways (the "Encroachment") shown in Attachment 1 located at 113 Yonge Street (the "Owner's Lands") underneath the Adelaide Street East sidewalk and Ching Lane, substantially on the major terms and conditions set out in Attachment 3, and including such other terms and conditions set out in Attachment 3, and including such other terms and conditions or such amendments to the major terms and conditions set out in Attachment 3 as deemed appropriate by the General Manager of Transportation Services (the "GM"), and in a form satisfactory to the City Solicitor.

2. Toronto and East York Community Council direct the GM to extend the Agreement to the new owner of 113 Yonge Street, in the event of a sale or transfer of the property at 113 Yonge Street, subject to the prior approval of the GM, and provided in all cases the transferee or assignee enters into an assumption agreement with the City to assume the obligations under the Agreement, as well as the obligations under the construction and licence agreement for the portion of the Tunnel on City-owned lands, in form satisfactory to the City.
3. Request the City Solicitor to prepare and arrange execution and registration of the Agreement as required by this report.

FINANCIAL IMPACT

There are no financial implications as a result of the recommendations contained in this report as repair, restoration and maintenance costs of the areaways will be borne by the owner.

DECISION HISTORY

This report addresses a new initiative.

COMMENTS

An application has been received by Read Jones Christofferson Ltd. on behalf of the Owner requesting permission to repair, restore and maintain the existing areaways that encroach beneath the City sidewalk and laneway adjacent to the building which is municipally known as 113 Yonge Street.

The existing areaways form part of the basement electrical rooms of the building and extend beneath the city sidewalk on Adelaide Street East and Ching Lane.

Transportation Services requested a title search for an existing encroachment agreement related to the areaways. The search revealed an agreement had been executed in 1965 between the City and a previous owner, Principal Investments Limited. The current applicant has advised that the property is now owned by 6 Adelaide Street Inc, following a change in ownership.

While the original agreement was registered on title at the time, to account for future sale or transfer of the property, its terms specify that the agreement is not transferable. As a result, the new property owner must now enter into a new encroachment agreement with the City to obtain permission to repair, restore and maintain the existing areaways within the right-of-way adjacent to the building municipally as 113 Yonge Street.

Additionally, under Municipal Code Chapter 743-33 (A) (3) the GM of Transportation Services only has authority for the property owner of the building to repair, restoration and maintain the existing areaways (or "building projections") under a local road, not an arterial roadway - therefore Community Council authority is required. An encroachment agreement between the City and the Owner will set out the Owner's responsibilities for repair, restoration and maintenance of the existing areaways that encroach beneath the city right-of-way.

As there may be impacts to existing utility infrastructure, it will be the Owner's responsibility to undergo a public utility review and obtain clearances from the affected utility agencies including satisfying their requirements prior to the issuance of a construction permit authorizing work within the public right-of-way.

Transportation Services has reviewed the application and determined that the construction and maintenance of the encroachment will not impact negatively on the public right-of-way.

The Ward Councillor has been advised of the recommendations in this report.

A plan showing the extent of the areaway repair work is included in Attachment 1 and a photo of the property at 113 Yonge Street is included in Attachment 2.

CONTACT

Elio Capizzano, Manager, Permits and Enforcement - Transportation Services, 416-392-7878, Elio.Capizzano@toronto.ca

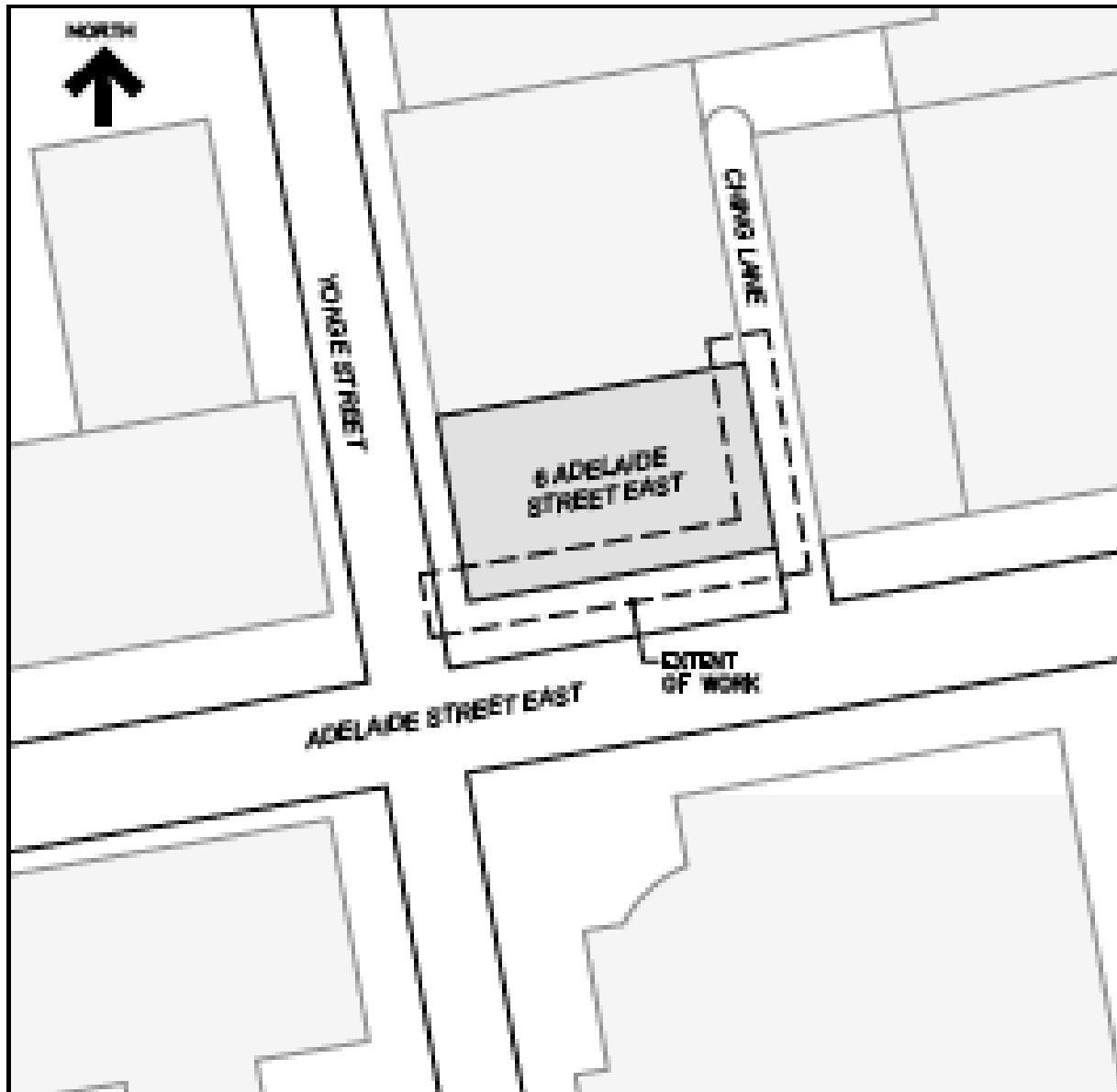
SIGNATURE

Antonia Markos
Director, Permits and Enforcement, Transportation Services

ATTACHMENTS

Attachment 1 - Plan Showing the Extent of the Areaway Repair Work
Attachment 2 - Photo of 113 Yonge St, at Street Level
Attachment 3 - Major Terms and Conditions
Attachment 4 - Chapter 743, Appendix 'A'

Attachment 1: Plan Showing the Extent of the Areaway Repair Work



Attachment 2 - Photo of 113 Yonge Street at Street Level



Attachment 3:

Major Terms and Conditions

- a. the Owner shall indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted, any matter related to the Encroachment, and any failure of the Owner to comply with the Agreement, which indemnity shall be in a form and content satisfactory to the City Solicitor;
- b. the Owner shall, at its own expense, design, construct and repair and maintain the Encroachment in a state of good repair to the satisfaction of the GM of Transportation Services and to agree not make or permit any additions or modifications to the encroachment beyond what is allowed under the terms of the Agreement;
- c. the Owner shall accept such additional conditions as the City Solicitor, or the General Manager of Transportation Services may deem necessary in the interest of the City;
- d. the Owner will enter into an encroachment agreement with the City of Toronto, at the applicant's expense, and assume all liability and damages related to the Encroachment;
- e. the Owner shall obtain all Public Utility Coordinating Committee clearances and/or signoffs from the public utility companies and satisfy any requirements they may have;
- f. the Owner shall ensure any design of the proposed Encroachment that impacts Toronto Water's infrastructure shall meet Toronto Water's standards and approval conditions, as determined by Toronto Water in their sole discretion;
- g. the Owner shall obtain approval and all necessary permits and agreements for the construction of the proposed Encroachment from the Toronto Building Division, if required;
- h. prior to commencement of construction, a construction permit and street occupation permit shall be obtained by the Owner in accordance with Article III of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;
- i. the Owner shall submit and adhere to an accepted Traffic Management Plan, Construction Management Plan, Construction Schedule letter and Traffic Assessment Study outlining the proposed areaway repair work and advise on the impacts in the area of the Encroachment within the Public Highway, which content shall be to the satisfaction of the GM, prior to the issuance of a construction permit;
- j. pay (i) an annual licence fee in an amount determined by Corporate Real Estate Management, and (ii) any applicable real property taxes eligible. The licence fee shall be recalculated every five (5) years based on market value;

k. the Owner shall, at its own cost, charge and expense and to the satisfaction of the GM alter or remove the Encroachment either on the demolition of the building, which is municipally known as 113 Yonge Street or, if deemed necessary by the GM of Transportation Services for municipal purposes upon receiving not less than ninety (90) days notice in writing from the GM;

l. the City shall maintain the right to place or affix pipes, cables, wires, poles and other infrastructure within/to, over or under the Encroachment;

m. the City shall not be responsible for repairing or replacing the Encroachment damaged as a result of street repairs, construction or other municipal activities on the public highway;

n. the City shall be released from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from the permission granted, which release shall be in a form and content satisfactory to the City Solicitor;

p. the Owner shall provide and maintain public liability and property damage insurance with an insurer satisfactory to the GM for the lifetime of the Agreement in a form as approved by the Chief Financial Officer and Treasurer, including a cross-liability /severability of interest clause, a provision that the insurance is primary before the insurance of the City, and a thirty (30) day prior notice of cancelation/renewal clause, and in the amount not less than \$5 million or such greater amount as the Chief Financial Officer and Treasurer may require;

q. the Owner shall provide and maintain an irrevocable letter of credit, in an amount satisfactory to the GM, to be retained by the City, for the duration of construction of the Encroachment within the Public Highway, to secure against any damage to the Public Highway and to guarantee construction of the Encroachment and that the work within the Public Highway is completed to the City's satisfaction, including the restoration of the Public Highway, to the satisfaction of the GM, to be retained by the City for the duration of the Repair Work and renewable for a two (2) year period from the date that the repair work is completed to the satisfaction of the GM, to secure against any damage to the Public Highways and to guarantee that the Repair Work within the Public Highways is completed to the satisfaction of the GM; failing which the City may in its sole discretion draw down upon the letter of credit in such amount(s) as required to complete the Owner's obligations under the Agreement. The letter of credit will be released after the expiry of the two-year guarantee period, upon the Owner providing a construction sign-off letter stamped and signed by the structural engineering firm that designed the Encroachment which states that the right-of-way is safe and ready to be opened to pedestrian and vehicular traffic, and execution of the Agreement;

r. Within sixty (60) days of completion of the repair work, the Owner shall:

1. deliver as-built drawings of the structures, building and improvements within the areaways to the GM at trarrow@toronto.ca and Utility Mapping at utilitymapping@toronto.ca; and

2. deliver to the GM a certificate, stamped and signed by the Licensee's professional engineer incensed in the Province of Ontario (the "Structural Engineer") certifying that the repair work to the areaways has been completed in substantial conformance with the plans, drawings and specifications accepted by the GM; and

3. submit a survey for the Encroachment which includes the location and area of the Encroachment in square metres to the GM at trarrow@toronto.ca and utilitymapping@toronto.ca;

s. the Owner shall pay the City all costs related to the engineering review and inspection fees that may be required;

t. the Owner will be responsible for the restoration of the road and laneway pavement, including adjacent sidewalks and boulevards, if necessary, to the satisfaction of the GM, upon completion of the Encroachment repair work;

u. the Owner shall not make or permit any additions or modifications to the Encroachment beyond what is permitted under the terms of the Agreement without the City's consent, which may be unduly delayed or arbitrarily withheld;

v. the term of the Agreement shall expire on the earlier of: (i) the complete or partial removal or abandonment of the Encroachment, if permitted under the Agreement (ii) if deemed necessary for municipal purposes as determined by the GM, acting reasonably, upon receiving 90 days' notice in writing from the GM, or (iii) in the event that the GM determines there is an emergency that presents a danger to the public health or safety, upon such notice as the GM determines is appropriate in the circumstances, if any;

w. at the expiration or earlier termination of the Agreement, at the City's sole discretion, the City may require the Owner to alter, demolish and/or remove the Encroachment at the Owner's sole cost and expense, to the satisfaction of the GM, and after the removal of the Encroachment the Owner shall restore the street pursuant to Article VIII of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;

x. the Owner agrees that the City shall have the right of entry onto the Owner's Lands to access the Encroachment for the purposes of inspection, repair, or removal of the Encroachment or performing any other activity permitted by the City under the Agreement, on terms acceptable to the GM;

y. the Agreement shall include rights and remedies acceptable to the GM, including the right, but not the obligation, of the City to remedy any failure of the Owner to comply with the Agreement, and the costs incurred by the City in enforcing the Agreement shall be payable by the Owner;

z. shall require the Owner to adhere to applicable federal, provincial or municipal laws, by-laws, policies including the City of Toronto Municipal Code and Transportation Services' standard process for acquisition of encroachment agreements;

aa. the provisions of Appendix A of City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, attached as Attachment 4 to this report, shall be incorporated into the Agreement;

bb. the Agreement shall be registered on title to the Owner's Lands and other affected properties as deemed necessary by the City Solicitor, at the expense of the Owner, with appropriate title opinions provided to the satisfaction of the City Solicitor as may be required by the City Solicitor;

cc. the Owner shall pay all cost associated with the preparation of the Agreement and the registration of the Agreement on title;

Attachment 4

Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of

1. These standard terms and conditions apply to all work conducted by or on behalf of the applicant.
2. Unless otherwise specifically provided in these standard terms and conditions, the terms specified herein have the same meaning given to them in Chapter 743, Streets and Sidewalks, Use of.
3. All street work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws and other applicable legal requirements.
4. All street work shall conform to City of Toronto construction standards and specifications, and shall be conducted and completed to the satisfaction of the General Manager.
5. All street work shall be performed in a manner that safeguards and protects all other equipment, facilities and improvements of any kind ("improvements") present in, on, over, under, across, or along the street and the environment.
6. The applicant shall take whatever steps are necessary to ensure the protection of the public.
7. The applicant shall not unduly interfere with the use of the street for free passage by the public.
8. The applicant shall make all necessary arrangements with traffic, police and fire authorities for the placing of barricades, notices, warning lights and signs and that all such barricades, notices, warning lights and signs shall conform with applicable law.
9. No street work shall block or impair the entrance to any premises abutting the work location unless the applicant has obtained and filed with the application for the permit the consent in writing of the Owner and occupant of such premises.
10. All street work shall be conducted in a manner so as to maintain access for emergency vehicles.
11. The street work shall be completed without delay.
12. The permit shall not authorize occupying a larger portion of the street or extend for a longer period of time than may be necessary in the opinion of the GM, having due regard to the applicant's needs and the safety and convenience of the public.
13. After completing any street work, the applicant shall restore and/or leave the street in substantially the same condition in which it was before such street work was undertaken by the applicant, free from nuisance and to the satisfaction of the GM. If the applicant fails to repair and restore any street to the satisfaction of the GM within 48

hours of being notified by the City, the City may undertake such repairs and charge all costs owing to the applicant, and may draw on any financial security or deposits submitted by the applicant.

14. The applicant shall maintain the equipment in good and proper repair and in a condition satisfactory to the GM.

15. Should the GM deem it necessary for the equipment to be removed or altered in an emergency, including repairs or maintenance to equipment owned or operated by the City or any agency, board or commission of the City, the GM, without notice to the applicant, may alter or remove, or cause to be altered or removed, the equipment and, subject to the requirements of any applicable law or existing agreement, the cost of such alteration or removal of the equipment shall be borne by the applicant.

16. Should the GM deem it necessary for the equipment to be removed or altered for any municipal purpose, including installation or alteration of new or existing plant by any agency, board or commission, the GM may upon three months' notice in writing to the applicant, alter or remove, or cause to be altered or removed, the equipment or such portions of same not already altered or removed by the applicant, and subject to the requirements of any applicable law or existing agreement, the cost of such alteration or removal of the equipment shall be borne by the applicant.

17. If the City requires that any street work be stopped, the applicant shall cease such street work following notice to the applicant provided by the GM.

18. The applicant shall be at all times responsible for all aspects of the street work, including the cost of such street work.

19. The applicant shall notify the City promptly of any damage caused by the applicant in connection with its street work.

20. The City has made no representations or warranties as to the state of repair of the streets or the suitability of the streets for any business, activity or purpose whatsoever, and the applicant hereby agrees to take the streets on an "as is" basis for the purpose of the carrying out of the applicant's street work and the City is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its streets.

21. The applicant shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "safety rules"). If in the opinion of the City the likelihood of harm to persons or property appears imminent, the City may suspend street work performed by or on behalf of the applicant where there appears to be a lack of compliance with the safety rules, or because conditions of danger exist that would likely result in injury to any person or property. Such suspension shall continue until the lack of compliance or danger is eliminated.

22. For the purpose of this provision, "hazardous substance" means any hazardous substance and includes, but is not limited to, radioactive substances, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal. The applicant agrees to assume all environmental liability relating to its work in, on, over, under, across, or along the streets, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around streets that result from:

- (a) The operations of the applicant in, on, over, under, along, across or around the streets; or
- (b) Any products or goods brought in, on, over, under, along, across or around the streets by the applicant, or by any other person with the express or implied consent of the applicant.

23. The applicant shall in writing, prior to any permit being granted by the GM, indemnify and save harmless the City, its elected and appointed officials, officers, employees, directors and agents from and against all actions, claims, executions, demands, damages, liabilities, liens, costs, expenses direct or indirect (including reasonable legal fees and disbursements), and losses whatsoever incurred by the City, its elected and appointed officials, officers, employees, directors and agents in connection with the issuing of the permit, the conduct of the applicant's street work or the use of applicant's equipment, including claims in respect of property damage or personal injury, including death, and will pay to the City and to each such official, servant or agent on demand any loss, costs, damages and expenses, including legal fees and disbursements, that may be sustained, incurred or paid by the City or by any of its officers, servants and agents in consequence of any such action, claim, lien, execution or demand, including any monies paid or payable by the City or any of its officials, officers, servants or agents in settlement or discharge or on account thereof, provided that on default of such payment all loss, costs, damages and expenses and all such monies so paid or payable may be deducted from any security held by the City on account of the permit of the street work.

24. The City shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with the applicant's street work.

25. The applicant shall, at their own expense and to the satisfaction of the GM, procure and carry, or cause to be procured and carried and paid for, full workers compensation coverage for itself and all workers, employees, and others engaged in or upon any street work.

26. The applicant shall deliver, when required by the GM, a performance bond or letter of credit in a form satisfactory to the Controller and in an amount which is satisfactory to the GM to ensure proper compliance with this Chapter.

27. The applicant shall at all times during the term of the permit and subsequent to the completion of the street work provide an accurate and timely in-house "locate" service or be a member of a "locate" service, in which case the applicant shall advise the GM of its membership in such a service. Should the applicant fail to comply with this provision,

the City shall not be required to make any special effort to determine or confirm the location of the equipment. The applicant shall, at the request of the City or any third party, provide or cause to be provided accurate on-site locates within 14 consecutive days of receiving a request for such information.

28. The applicant shall respond within 14 consecutive days to any request from the City for a mark-up of municipal infrastructure design drawings showing the location of any portion of the equipment located in, on, under, over, across, or along the streets shown on the plans, and shall provide such accurate and detailed information as may be required by the GM.

29. The applicant will, at its sole cost and expense, maintain the equipment according to the drawings or subsequent "as built" drawings and in a state of good order, condition and repair, to the full satisfaction of the GM, acting reasonably.