



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
*Operations Division*

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	August 17, 2017
<b>SUBJECT/REPORT NO:</b>	Delegated Authority for Grade Level Railway Crossing Agreements (PW17066) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	George Berenyi, P.Eng. (905) 546-2424, Extension 2927
<b>SUBMITTED BY:</b>	Betty Matthews-Malone, P.Eng. Director, Operations Public Works
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the General Manager of Public Works or their designate be delegated the authority to negotiate, enter into and execute on behalf of the City of Hamilton any Crossing Agreement, renewal, amendment and necessary ancillary document respecting a Grade Level Railway Crossing, with content satisfactory to the General Manager of Public Works, and in a form satisfactory to the City Solicitor, subject to the following conditions:
- (i) The Agreement contains terms and conditions consistent with similar existing Agreements and/or federal transportation agency orders, if such exist; and
  - (ii) The Agreement contains terms and conditions consistent with the Canadian Transportation Agency's guide to Railway Charges for Crossing Maintenance and Construction or any equivalent guideline in effect at the time of execution; and
  - (iii) The General Manager of Public Works is of the view that the terms and conditions of the Crossing Agreement are commercially reasonable in the circumstances.
- (b) That the General Manager of Public Works or their designate be delegated the authority to file any Crossing Agreement referenced in subsection (a) with the Canadian Transportation Agency or another relevant regulatory or governmental authority if the General Manager of Public Works determines that such a filing is appropriate.

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## **EXECUTIVE SUMMARY**

The Operations Division is responsible for coordinating road maintenance activities and budgets associated with Grade Level Railway Crossings. Other Divisions within the City also undertake or coordinate works within Grade Level Railway Crossings. This report seeks delegated authority for the General Manager of Public Works to enter into Crossing Agreements (Agreements) for Grade Level Railway Crossings in the City of Hamilton. Railway Authorities operating within the City of Hamilton include Canadian National Railway (CNR), Canadian Pacific Railway (CPR) and Southern Ontario Railway (SOR). Appendix "A" contains a map which illustrates the location of existing Grade Level Railway Crossings in the City of Hamilton.

Most existing Grade Level Railway Crossings are subject to federal orders, formal agreements or informal agreements. While the terms and conditions of an Agreement can vary, it typically addresses matters such as: location, nature of the work, ongoing maintenance, operation, costs apportionment, term, insurance and liability. Normally the term of the Agreement will continue until the railway discontinues its operations, the road authority closes the right-of-way at the location, or the parties agree to change or terminate the Agreement. The delegated authority recommended by this report will only apply to situations where the proposed Agreement is consistent with similar existing Agreements and/or orders as well as the applicable federal guidelines, and legislation, in effect at the time of Agreement execution. If the proposed Agreement contains terms inconsistent with similar Agreements for similar projects, and is not authorized under existing delegated authority, it will be brought to Committee and Council for consideration and approval. Formalizing the delegated authority will allow staff to continue working expeditiously with railway authorities on joint City of Hamilton and railway projects such as road upgrades, road conversions, railway crossing rehabilitations, railway track upgrades and railway track expansions.

A number of planned upgrades or expansions to Grade Level Railway Crossings are expected in the near future. It is expected that Railway Authorities will request that the City of Hamilton enter into new Grade Level Railway Crossing Agreements for each location. Appendix "B" contains a list provided by Metrolinx which includes eleven locations as candidates for expansion.

### ***Alternatives for Consideration – See Page 4***

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: There are no financial implications.

Staffing: There are no staffing implications.

Legal: While not required, there is an option under section 101 of the Canada Transportation Act to file an agreement relating to the construction, maintenance, or apportionment of the costs of a road crossing with a railway line with the Canadian Transportation Agency. When an Agreement or an amendment is filed, it becomes an order of the Agency authorizing the parties

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to construct or maintain the crossing, or apportioning the costs, as provided in the Agreement. Any such order for a road crossing establishes a statutory right to cross at a specific location, and registers the Agreement with the Agency, as a court of record, in the event of a future dispute. It is therefore recommended that the General Manager of Public Works, or their designate, be delegated the authority to file any Agreement referenced in subsection (a) with the Canadian Transportation Agency or another relevant regulatory or governmental authority if the General Manager of Public Works determines that such a filing is appropriate.

In cases where the City and a Railway Authority are unable to negotiate an Agreement, staff would bring the matter in question to Committee and Council for direction.

## **HISTORICAL BACKGROUND**

There are approximately 90 Grade Level Railway Crossings located within the City of Hamilton. Railway Authorities operating within the City of Hamilton include Canadian National Railway (CNR), Canadian Pacific Railway (CPR) and Southern Ontario Railway (SOR). Appendix A illustrates the location of Grade Level Railway Crossings in the City of Hamilton. There is a shared responsibility between the City of Hamilton and the Railway Authorities to operate and maintain each Grade Level Railway Crossing. These responsibilities are identified in various formal and informal agreements between the City of Hamilton and the Railway Authorities.

A number of existing Grade Level Railway Crossings in the City of Hamilton are subject to existing federal transport orders which identify how the responsibility and costs are apportioned between the City of Hamilton and the Railway Authority. In some cases, there may be a third party associated with the Agreement who also shares in the responsibility and/or costs. Examples of third parties may include heavy industrial users and/or adjoining businesses.

In many cases, federal orders are dated and may not reflect current conditions or changes to Transport Canada policies and guidelines. The City is expecting to receive a number of requests for upgrades and expansions to a number of Grade Level Railway Crossings. Appendix "B" contains a list of 11 Grade Level Railway Crossing locations being planned for upgrades by the Rail Authority. The City will be requested to enter into an Agreement for each crossing.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The City of Hamilton and Railway Authorities are subject to transportation legislation and guidelines which govern Grade Level Railway Crossings and which may impose requirements for the crossings including but not limited to:

- The Federal Railway Safety Act
- Grade Crossings Regulations (SOR/2014-275)

- The Canadian Transportation Agency's Guide to Railway Charges for Crossing Maintenance and Construction 2015

The shared responsibilities, for each Grade Level Railway Crossing, are formalized by entering into an Agreement.

### **RELEVANT CONSULTATION**

The following Divisions were consulted and are in agreement with the report recommendations:

- Legal Services Division
- Engineering Services Division, Public Works Department
- Infrastructure Planning Division, Planning & Economic Development
- Transportation Division, Public Works Department

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

It is recommended that authority be delegated to the General Manager of Public Works, or designate, to enter into Agreements with Railway Authorities. The Agreements will outline financial, maintenance and operating responsibilities associated with individual Grade Level Railway Crossings, and will generally remain in force until the Railway discontinues its operations, the City closes the highway at the crossing, or the parties agree to change or terminate the Agreement. Formalizing the delegated authority will allow staff to continue working expeditiously with Railway Authorities on joint City of Hamilton and Railway projects such as road upgrades, road conversions, track upgrades and track expansions.

It should be noted that, as a general practice, the City will work to negotiate the terms of any Agreement having regard to what is, in the judgement of the General Manager of Public Works, in consultation with the City Solicitor, commercially reasonable in the circumstances including consideration of existing property rights and the technical or engineering requirements related to the City's infrastructure (e.g., whether there is no reasonable alternative location for the infrastructure).

### **ALTERNATIVES FOR CONSIDERATION**

As an alternative, the Public Works Committee may elect to approve each individual Agreement, which could be brought forward separately to the Public Works Committee and Council for consideration and approval. This may result in delays of works planned by Rail Authorities.

Do nothing is also an alternative. Under section 101 of the *Canada Transportation Act*, if parties are unable to negotiate an agreement respecting construction or maintenance or apportionment of costs for a railway crossing with a roadway, application can be made to the Canadian Transportation Agency for a determination. The Agency can authorize the construction of a suitable road crossing or related work and specify who shall maintain the crossing. The Agency, under section 16 of the *Railway Safety Act*, can also

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apportion liability for the construction, alteration, operational or maintenance costs of such work.

**ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

**Built Environment and Infrastructure**

*Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

**APPENDICES AND SCHEDULES ATTACHED**

Appendix A: Location Map of Grade Level Railway Crossings in City of Hamilton

Appendix B: Metrolinx Planned Upgrades to Grade Level Railway Crossings