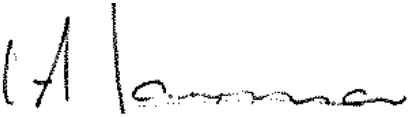




**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Growth Management Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	July 11, 2023
<b>SUBJECT/REPORT NO:</b>	Delegated Authority to Incorporate Lands as a Public Highway (PED23157) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Heather Travis (905) 546-2424 Ext. 2978
<b>SUBMITTED BY:</b>	Ashraf Hanna Director, Growth Management and Chief Development Engineer Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the General Manager of the Planning and Economic Development Department, or their delegate, be authorized and directed to prepare by-laws under the provisions of subsection 31(2) of the *Municipal Act*, as amended, and place before Council for enactment, to incorporate lands as a public highway, provided:

- (a) That the incorporating by-laws are in a standard form satisfactory to the City Solicitor;
- (b) That, upon passage of the by-laws, the City Solicitor, or designate, be authorized and directed to register the by-laws.

**EXECUTIVE SUMMARY**

Section 31(2) of the *Municipal Act* provides that land may only become a public highway (street) by virtue of a by-law establishing the highway. Section 31(3) of the *Municipal Act* exempts lands that are within a Registered Plan of Subdivision from being subject to this requirement. Lands that are located within a Registered Plan of

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Subdivision become a public highway by virtue of the registration of the Plan of Subdivision.

As such, where lands that are located outside of a Registered Plan of Subdivision are required to be opened as a public highway, the City is required to pass and register a by-law to confirm the lands as a highway (“street opening by-law”). Historically, the passage of the by-law has required the completion and presentation of a staff report to Planning Committee with a recommendation seeking that the lands be incorporated as a public highway and that staff be directed to prepare a by-law.

Through changes proposed in this report, the requirement for the staff report to Planning Committee would be removed by the granting of authority to the General Manager of Planning & Economic Development Department, or designate, to authorize such by-laws. Staff would continue to ensure that the impacted Ward Councillor would be notified and consulted in advance of a by-law being forwarded to Council for enactment.

**Alternatives for Consideration – See Page 6**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: N/A

Staffing: N/A

Legal: N/A

**HISTORICAL BACKGROUND**

Section 31(2) of the *Municipal Act* provides that land may only become a highway by virtue of a by-law establishing the highway. Section 31(3) of the *Municipal Act* exempts lands that are within a Registered Plan of Subdivision from being subject to this requirement. Lands that are located within a Registered Plan of Subdivision become a public highway by virtue of the registration of the Plan of Subdivision.

As such, where lands that are located outside of a Registered Plan of Subdivision are required to be opened as a public highway, the City is required to pass and register a street opening by-law to confirm the lands as a highway. Historically, the passage of the by-law has required the completion and presentation of a staff report to Planning Committee with a recommendation seeking that the lands be incorporated as a public highway and that staff be directed to prepare a by-law.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### ***Municipal Act***

Section 23.2(1)(c) of the *Municipal Act* allows a municipality to delegate legislative powers to “an individual who is an officer, employee or agent of the municipality”. Further, Section 23.2(4) identifies that delegation of legislative power may be made if it is the opinion of Council that the power being delegated is minor in nature. In determining whether or not a power is minor in nature, the Act identifies that factors to be considered should include the number of people, size of geographic area and time period being impacted. Some examples of powers that are deemed to be minor in nature are listed in 23.2(5), including closure of a highway and issuing and imposing conditions on a license.

Within the City of Hamilton, delegated authority to prepare road and planning related by-laws has previously been granted in the following circumstances: removal of H (Holding) provisions; removal of Part Lot Control; incorporation of reserves into a public highway; and amendments to the Parking and Traffic by-laws. It is staff’s opinion that delegating authority to prepare by-laws to open streets (outside of a Plan of Subdivision) should be considered in the same manner to these other processes. Further rationale and explanation of the process for preparing these by-laws is provided in the section below.

## **RELEVANT CONSULTATION**

- Planning & Economic Development Department, Growth Management Division; and,
- Corporate Services Department, Legal Services Division.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

1. Provincial legislation requires a Municipal By-Law passed by Council to incorporate lands into the Municipal public highway system, with only lands that are located within a Registered Plan of Subdivision being exempt from this requirement.

Specifically, Section 31(2) of the *Municipal Act* provides that land may only become a highway by virtue of a by-law establishing the highway. Where lands that are located outside of a Registered Plan of Subdivision are required to be opened as a public highway, the City is required to pass and register a street opening by-law to confirm the lands as a highway. Situations where a street opening by-law is required are very limited as the majority of roads are opened as part of the registration of a Plan of Subdivision. Examples of situations where a street opening by-law would be required include:

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- Phasing of development results in removal or creation of temporary turning circles. As temporary turning circles are removed or created, it may occur that lands outside of a Registered Plan of Subdivision are required to be incorporated into the public highway;
- Lands were not required as a public highway at the time a Subdivision is registered, and therefore not part of the Registered Plan, but as development in the vicinity continues, the lands are required to be opened as a street;
- Land transfers that occur after a Subdivision is Registered;
- Extension of an existing road within a Secondary Plan where an approved Council policy notes that Draft Plan of Subdivision approval is not required to extend the road. In this scenario, the extension of the road is facilitated through a deposited reference plan and a Street Opening By-law; and,
- Other unique situations as may arise.

As is outlined above, the circumstances where this requirement would occur are limited, with generally only one to two situations per year requiring a street opening by by-law.

2. The current process for the passage of a street opening by-law is as follows:

- Growth Management staff identify street requiring opening outside of a Registered Plan;
- Construction status of the street is confirmed as paved and ready for opening;
- Deposited reference plan identifying parts to form street is reviewed and confirmed;
- Staff prepare a Report for presentation at Planning Committee with recommendation for street opening and by-law for adoption. The Report contains necessary background information, recommendation for opening, street opening by-law and deposited reference plan;
- Report is reviewed by several City divisions (Surveys, Growth Management, Legal) and senior staff;

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OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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- Following approval of Report at Planning Committee the by-law is forwarded to Council for adoption; and,
- Following adoption of by-law, legal staff provide notice of Registration of the by-law at the appropriate Land Registry office.

Of the steps noted above, the preparation and review of the Report is fairly time consuming for staff and management. Further, the presentation of the Report at Planning Committee as a consent item requires further staff time to be present at the Planning Committee meeting. It is estimated that the above noted process averages six month's time including report writing, review, Planning Committee, Council and by-law registration.

3. The recommendation of this Report proposes to remove the requirement for staff to prepare and present a Report to Planning Committee for a street opening by-law and instead authorizes the General Manager of Planning and Economic Development Department, or designate, to authorize such a by-law. In this regard, the report to Planning Committee would not be required, and the street opening by-law may be prepared, reviewed internally by appropriate staff, and added to the next Council agenda.

The rationale for this proposed change in approach is as follows:

- The removal of the requirement to bring a report to Planning Committee will create efficiencies in the process and reduce the staff time involved;
- Reducing the overall process time will ensure the timely enactment of street opening bylaws which is important as these by-laws typically pertain to sections of roads that are fully constructed but the provisions and regulations under the Ontario Highway Traffic Act cannot be applied until those road sections are designated as public highway;
- The proposed process is consistent with the proceedings for the incorporation of road widenings and reserves into the public highway system, for which authority to prepare by-laws was previously delegated to the General Manager of the Public Works Department (Report PW22013);
- In the majority of cases where a street opening by-law is required, lands in the immediate vicinity of the street have been subject to recent development approvals and / or the road extension is already contemplated through a Secondary Plan;

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- Prior to preparation of the street opening by-law, staff would continue to review and circulate the proposed by-law to all impacted city departments ensuring due diligence is completed. Growth Management staff would prepare a short information report for the file record which would be maintained internally and would not require Committee approval. This is similar to the existing process utilized for the applications to remove Part Lot Control; and,
- Staff consider this delegated authority to be minor in nature as per the requirements of the *Municipal Act*, given the limited number of circumstances where a street opening by-law is required.

All other aspects of the existing process as noted above would remain in place, including the requirement for the by-law to be passed by council and Registration of the by-law upon request of legal staff.

Further, to ensure that the impacted Ward Councillor is made aware of the street opening by-law and has an opportunity to ask any questions or provide comments, Staff will notify and consult with impacted ward councillor prior to enactment of bylaw.

## **ALTERNATIVES FOR CONSIDERATION**

Council may choose not to grant delegated authority to staff to prepare a by-law to incorporate lands into a public highway. In this case, the current process would continue with no changes. As noted above, staff find that the current process is not an efficient use of staff's or Council's time, and therefore do not recommend this alternative.

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

### **Economic Prosperity and Growth**

*Hamilton* has a prosperous and diverse local economy where people have opportunities to grow and develop.

### **Healthy and Safe Communities**

*Hamilton* is a safe and supportive city where people are active, healthy, and have a high quality of life.

### **Built Environment and Infrastructure**

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

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**APPENDICES AND SCHEDULES ATTACHED**

N/A

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