





**CITY OF HAMILTON**  
**PUBLIC WORKS**  
**Engineering Services**  
**and**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Licensing and By-Law Services Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	July 10, 2024
<b>SUBJECT/REPORT NO:</b>	Internal Infill Pilot Program to Address Activities on City Right-of-Way (PW24044/PED24086) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Rob Merritt (905) 546-2424 Ext. 4969 Tamara Reid (905) 546-2424 Ext. 1969
<b>SUBMITTED BY:</b>	Jackie Kennedy Director, Engineering Services Public Works
<b>SIGNATURE:</b>	
<b>SUBMITTED BY:</b>	Dan Smith Acting Director, Licensing and By-Law Services Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Licensing and By-Law Services staff be directed to consult with Legal Services and Engineering Services to develop amendments to the Installation of Equipment on Roads By-Law 15-091 pertaining to the enforcement of permits issued for work within public Right-of-Way and to report back to the Public Works Committee by Q4 2024;
- (b) That Licensing and By-Law Services staff be directed to consult with Legal Services and Engineering Services to develop amendments to the Streets By-Law 86-77 pertaining to the enforcement of permits issued for Right-of-Way occupancies, and to report back to the Public Works Committee by Q4;

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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

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- (c) That the internal Infill Pilot Program between Licensing and By-Law Services and Engineering Services, be approved as a permanent program, subject to the approval of the staffing resourcing outlines in Recommendation d) and e);
- (d) That subject to the approval of Recommendations (c) and (e) of Report PW24044/PED24086, one full-time (1.0 FTE) Municipal Law Enforcement Officer, at an estimated annual cost of \$140,000 funded by user fees collected by Engineering Services be approved, and;
- (e) That subject to the approval of Recommendation (c) and (d) of Report PW24044/PED24086, the purchase of one vehicle at an estimated initial cost of \$54,525, and an estimated annual operating cost of \$6,250, be approved, for Licensing and By-Law Services.

**EXECUTIVE SUMMARY**

In 2021, Planning and Economic Development approved the Internal Infill Pilot Program, which introduced a collaboration between Licensing and By-law Services and Public Works to address the disruption and negative impacts to the Right-of-Way due to unpermitted activities during Infill redevelopment projects. In addition to Infill redevelopment, other prohibited activities include, but are not limited to; various private construction works, film productions, and landscape projects. Engineering Services requires applicants to apply for and receive approval to occupy the Right-of-Way to reduce disruption to the public, minimize safety risk.

To further ensure the safe and efficient use for all modes of transportation. Currently, Public Works has the means to issue, set conditions and revoke permits, but does not have the means to inspect and follow through where non-compliance occurs. Permits are issued to occupy the Right-of-Way but are not supported by enforcement if not followed or managed. Licensing and By-law Services seeks to provide inspection and enforcement of issued permits not properly implemented and for occupancies requiring permits where none were issued.

Through the Internal Infill Pilot, one (1) Municipal Law Enforcement Officer was approved to conduct regular inspections of unpermitted/permitted closures and occupancies to identify, and address safety concerns immediately on site through progressive enforcement, which included, but was not limited to; education, verbal direction to seek voluntary compliance and/or issuance of fines and penalties should contraventions with policies and municipal by-laws be determined.

**Alternatives for Consideration –See Page 5**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The estimated annual cost of a permanent Infill Program is estimated at an annual cost of \$140,000 for one full-time (1.0 FTE) Municipal Law Enforcement Officer from within Licensing and By-Law Services to be funded through existing User Fee revenue from Engineering Services.

One (1) vehicle at \$54,525 plus annual operating costs of \$6,250 for the program funded from Public Works, Engineering Services' User Fees.

**Staffing:** Staffing requirements associated with a permanent Infill Program include one (1.0 FTE) Municipal Law Enforcement Officer to provide proactive and reactive enforcement for the Program.

**Legal:** Consultation with Legal Services will be required to complete work and prepare amendments to the Installation of Equipment on Roads By-Law 15-091 and to the Streets By-Law 86-77, as they pertain to Right-of-Way occupancy activities.

**HISTORICAL BACKGROUND**

At its meeting of September 9, 2015, Council approved Item 8.2 of Public Works Committee report 15-011, attached as Appendix “B” to Report PW24044/PED24086, Lane Closure Policy (PW13021(a)). This report approved a Temporary Lane Closure Policy which directed staff to implement the policy as of January 1, 2016, and that any existing lane closures be grandfathered until the expiry of the existing road occupancy permit or approved traffic management plan time period.

The policy addressed safety related issues due to construction, the need to have timelines for lane and sidewalk closures with additional user fees where appropriate, and to set consequences if timelines were not met. The policy ensured consistency for all types of road permits through coordination, approvals, and fees.

On April 1, 2021, an Internal Infill Pilot Program between Public Works, and Licensing and By-Law Services began with a term of one year, to end March 31, 2022. The program included funding from Public Works in the amount of \$100,000 for one full-time (1.0 FTE) Municipal Law Enforcement Officer to educate and enforce temporary road lane and sidewalk closures. The pilot was initiated to support Public Works with ongoing permit compliance issues, unauthorized use of the City's Right-of-Way and to ensure safe passage for all road users including cyclists, pedestrians, and motorists.

The program repeated in 2022 and in 2023, with a funding increase to \$120,000 from Public Works, as the program was determined a success in reducing disruptions to the community and increasing the safety of all Right-of-Way users alike.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Staff's review considered the following applicable Municipal and Provincial legislation:

- The City of Hamilton Budgeted Compliment Control Policy.

## **RELEVANT CONSULTATION**

In preparing this report and crafting the recommendations highlighted herein, the following internal divisions were consulted:

- Planning and Economic Development Department, Licensing and By-law Services Division
- Public Works, Engineering Services
- Legal and Risk Management Services, Corporate Services
- Financial Planning, Administration, and Policy

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

Temporary Right-of-Way occupancies are necessary to accommodate activities including but not limited to; construction, construction equipment, filming, landscape material delivery, and storage. Occupancies that are permitted without adherence to conditions and/or unpermitted occupancies present potential safety concerns for all road users including cyclists, pedestrians, and motorists.

The program seeks to:

- Maintain safe and efficient rights-of-way for all modes of transportation;
- Protect vulnerable road users from personal injury;
- Protect property and municipal assets and infrastructure;
- Minimize disruption of builder and public to utilize roads and abutting properties;
- To be accountable to public and to applicants;
- Initiate enforcement processes where none existed previously;
- Establish best practices to mitigate risk to the City of Hamilton; and,
- Continue the collective ownership initiatives between departments.

Municipal Law Enforcement Officers are sworn Officers whom amongst other regulations, can address infractions of by-laws made under the *Municipal Act*,

2001. Municipal Law Enforcement Officers are able to address unsafe situations immediately on site using a variety of enforcement tools. Officers completed 591 inspections in 2023, an increase of 33% from 2021. They issued 29, \$200 Administrative Penalties in 2023 for a total of \$5800, an increase of 26% from 2021. Engineering Services reported an increase of Lane and Sidewalk Permits issued of 11% from 2021 to 2022 (2023 data unavailable at the time of writing). Right-of-Way occupancies continue to increase as does the requirement for compliance, the program is effective in safely addressing those situations. For more detail see Appendix "A" to Report PW24044/PED24086.

In situations where unpermitted closures and occupancies were investigated, a Municipal Law Enforcement Officer would engage with Public Works to determine whether a permit is required, to direct to obtain a permit if needed, then continue to apply progressive enforcement.

Permits issued by the Film Office may also include permit applications for occupancy of Right-of-Way through Engineering Services. Licensing and By-Law Services receives copies of Film permits weekly which are inspected on site for compliance with their Right-of-Way occupancy permits. Where contraventions are confirmed, the applicant is educated and referred to Engineering Services team to apply for a permit. The Film Office is also notified.

Planning and Economic Development and Public Works agree with the continuance of the program and are supportive of its objective to keep the community safe. Legal services have agreed to assist in the review and development of amendments to the by-laws.

## **ALTERNATIVES FOR CONSIDERATION**

Council may choose not to direct Licensing and By-Law services staff to consult with Legal Services and Engineering Services to develop and bring forward to the Public Works Committee amendments to the Installation of Equipment on Roads By-Law 15-091 that pertain to enforcement of permits issued for work within public Right-of-Way.

Council may choose not to direct Licensing and By-Law services staff to consult with Legal Services and Engineering Services to develop and bring forward to the Public Works Committee amendments to the Streets By-Law 86-77 that pertain to enforcement of permits issued for occupancy within public Right-of-Way.

Council may choose to have the program continue while staff review amendments to the Installation of Equipment on Roads By-Law 15-091 and the Streets By-law 86-77.

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Financial: Temporary Program continues at a cost of \$140,000.

Staffing: Temporary Staffing of one (1.0 FTE) Municipal Law Enforcement Officer.

Legal: Consultation with Legal Services may be required to complete work and prepare amendments to the Installation of Equipment on Roads By-Law 15-091 and to the Streets By-Law 86-77, as they pertain to Right-of-Way occupancy activities.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report PW24044/PED24086: 2023 Infill Project Report Year End Report with 2021-2023 Statistics

Appendix "B" to Report PW24044/PED24086: Council Approved (September 9, 2015) Public Works Committee Report 15-011 (August 31, 2015)