

<b>TO:</b>	<b>CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON APRIL 16, 2019</b>
<b>FROM:</b>	<b>KELLY SCHERR, P.ENG., MBA, FEC MANAGING DIRECTOR, ENVIRONMENTAL &amp; ENGINEERING SERVICES AND CITY ENGINEER</b>
<b>SUBJECT:</b>	<b>PUBLIC LANE POLICY REVIEW</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, no action **BE TAKEN** with respect to the City of London’s public lane policies it being noted that current lane policies and practices adequately protect the interests of both neighbourhoods and the City yet are flexible enough to accommodate individual property owners.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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- Environment and Transportation Committee – January 14, 2008 – Public Lane Maintenance Policy
- Community and Neighbourhoods Committee – January 18<sup>th</sup>, 2011 – Marmora Lanes Closing

<b>2015-19 STRATEGIC PLAN</b>
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The following report supports the Strategic Plan through the strategic focus area of Strengthening Our Community by facilitating inclusive and engaged neighbourhoods.

<b>BACKGROUND</b>
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At the September 28<sup>th</sup>, 2018 Civic Works Committee, the following resolution was approved:

That staff BE REQUESTED to report back to the appropriate standing committee with respect to the current process, and potential improvements, with respect to unassumed laneways, and the request for delegation from M. Koch Denomme BE APPROVED and BE REFERRED to the meeting when this matter will be considered (4.3/13/CWC).

Purpose

This report reviews the City’s public lane policies and how they are applied in practice. In order to provide proper context to the complex issues surrounding lanes, a brief overview is provided.

## Origin of Lanes

Public lanes in the City were created by Registered Plans of Subdivision dating from the 1800's to early 1900's and were intended to provide horse drawn carriage access to rear yards where carriage sheds were typically located. Lanes essentially disappeared from Registered Plans after the 1920's when cars became the predominant mode of transportation and street-facing driveways were the norm. The transition to street-facing driveways has resulted in roughly half of the lanes in the City no longer being traveled and thus have fallen into disuse.

It should be noted that public lanes are distinct from private rights-of-way (ROWs). Private ROWs may have the appearance of public lanes, but ROWs are strictly a private property matter for which the City has no jurisdiction over and which the public has no legal right to use. To illustrate this point, almost all downtown "alleys" are private ROW's – there are almost no public lanes in the downtown area.

## Lane Ownership

Historically, lanes were considered to be privately owned (so-called "Survey Lanes") until the 1920 Surveys Act was amended to provide that lanes shown on Registered Plans were deemed to be public lanes owned by the local municipality. Much later in the 1980's, a Provincial Court Judge ruled that the 1920 Surveys Act provision was intended to be retroactive and that all lanes shown on Registered Plans of subdivision were to be considered public lanes owned by the municipality. As a result of this decision, municipalities in Ontario, including London, have accepted that they are the legal owners of public lanes within their municipality.

## Lanes are Public Highway

*The Municipal Act, S.O. 2001 c.25, S.26* provides that all lanes shown on a registered plan of subdivision are deemed to be "public highway", a powerful common law attribute which provides the general public, and particularly the abutting land owners, with the right to use lanes to access their properties. Removing or limiting public highway rights can generally only be done by court order or municipal Bylaw.

An important attribute of a public highway is that the *Real Property Limitations Act, R.S.O. 1990* provides the City with protection from claims of adverse possession (so-called "squatters rights") due to long-term occupation of lanes. This has played an important role in the City's lane policies and practices.

Even if lanes are no longer traveled, lanes still exist and retain their public highway status unless and until they have been legally closed. Lanes that have fallen into disuse could conceivably be re-opened for travel at any time.

## Lanes are Not Assumed for Maintenance

"Assumption" is process whereby the City formally assumes responsibility for maintenance of a public highway for the benefit of the traveling public. Once assumed, the City is legally responsible for maintaining a highway (i.e. street, road, sidewalks etc.) in accordance with Provincial minimum maintenance standards. Lanes in the City have never been legally assumed for maintenance by the City of London and therefore do not fall under this criteria.

## DISCUSSION

### Traveled Lane Maintenance

Lanes have never been assumed for maintenance partly because most were historically considered to be privately owned and partly because their physical nature make formal assumption difficult or impractical. Most lanes have not been properly engineered or built to a standard that can be effectively maintained by modern equipment used by the City. Lanes are typically narrow often with right-angle bends that cannot be easily navigated without encroaching onto and possibly damaging private property. Lanes are often burdened by encroachments, making them difficult to traverse and there is insufficient room for snow storage which makes standard snow ploughing difficult or impossible, thus requiring expensive snow removal services.

Notwithstanding that lanes have never been assumed by the City, in 2008 the City passed the Lane Maintenance Bylaw A.-6168-43. It calls for limited maintenance of traveled lanes such as pothole filling and/or grading upon request and where practically possible, but the Bylaw stops well short of full-fledged assumption for many of the practical reasons previously noted. The Bylaw was carefully designed to provide a modest but achievable level of lane maintenance that addresses the largest portion of complaints from the public, but at nominal cost. By all accounts, this goal has been achieved. Unfortunately, and mainly due to the practical maintenance problems lanes present, there are no additional maintenance options that the City can offer without significant cost implications or by raising risk-management concerns.

Therefore no changes to the City's lane maintenance Bylaw is recommended.

### Lane Closings and Disposition

The City's lane closing policies are stringent as they are designed to protect the interests of both neighbourhoods and the City:

- Since lanes typically serve properties within an entire block, any proposed closing must take into account how it would affect the neighbourhood rather than just be considered from an individual property owner's perspective no matter how compelling the case for closing may be. This is why permanent lane closings generally require the consent of all the affected property owners within the block.
- The closing policy necessitates closing the entire lane in a block to avoid land locking issues created by piecemeal lane closings. If sections of lanes can be isolated without affecting the larger neighbourhood, such partial closings can be considered for closing.
- Although the City has the right to unilaterally close lanes by Bylaw, if an abutting owner can demonstrate their property rights have been injuriously affected by the closing, the City puts itself at risk of being sued for damages.
- Closed lanes must also be disposed of; there is no benefit to only closing a lane as public highway – it must also be disposed of by being transferred to (presumably) the abutting property owner(s). Although Municipal Council has the power to close an entire lane in a block by Bylaw, the City cannot forcibly convey the lane to unwilling property owners. This is a major impediment to any potential lane closing program whether subsidized by the City or not.

All of these principles and issues are reflected in the City's current lane closing policy. It is important to note that these concerns apply even if the lane is not traveled; the

potential for future use must be taken into consideration when permanently closing a lane.

Although the City's lane closing policies are regimented to ensure protection for both neighborhoods and the City, special situations can always be brought forward to Municipal Council for determination. A good example of this occurred in 2011, when the City received a petition from the large majority of property owners living on Marmora Street which requested the City "do away" with the untraveled lanes behind their properties for many of the same reasons that led to this report. Council supported the petition and directed Civic Administration to make special accommodations in order to help ensure the successful closing and disposition of the lanes. Accordingly, the City agreed to sell the lanes to each property owner for nominal cost of one dollar rather than fair market value, and the City arranged for the services of an Ontario Land Surveyor to provide the required reference plan for a cost of \$500 per property owner, a fraction of what such a survey would normally cost. (A reference plan is a mandatory requirement when severing property.) The City also agreed to add the costs, where requested, to property owners' taxes for a 10-year no-interest scheduled payback.

Despite these extraordinary accommodations, in the end less than half of the property owners were willing to accept any portion of the lane or give their written consent to the closing. A small number property owners vehemently objected to the closing and others would only provide consent subject to unsupportable conditions. As a result, the application had to be abandoned. This experience illustrates the difficulty in obtaining the wide-spread cooperation needed to dispose of lanes even under relatively favorable conditions. Other municipalities have experienced similar challenges.

No changes to the current lane closing policies are recommended.

### Untraveled Lane Challenges

Due to the challenges related to the closing and disposing of lanes, it is no surprise that of the roughly 400 lanes in the City approximately half are no longer traveled. Many have fallen into various states of disuse and neglect. Regrettably, this situation can lead to a host of problems ranging from uncontrolled noxious weeds, sites of illegal garbage dumping and refuse collection to the creation of havens for undesirable social or even criminal behaviour. Such problems are not new, however, considering that lanes have existed in all states and forms for over a century.

What is known is that these problems cannot be solved by the City assuming responsibility for the lanes. Similarly, reporting criminal behaviour to the Police may not yield the desired results simply because lanes cannot be monitored continually twenty-four hours per day, seven days a week. Previously, property owner concerns have been resolved by adjacent property owners simply taking over and occupying the untraveled lane. This has been done unilaterally and/or in co-operation with neighbors and has involved extending fences to enclose the lane.

Since such occupations are contrary to the Streets Bylaw, the City cannot grant permission or condone such action, however taking over and occupying vacant lanes appears to be an effective method for property owners who are desirous of eliminating vacant lane problems that may affect the use and enjoyment of their own property. The City's practice in the face of such quiet occupation has generally been to take no action provided other municipal By-laws are otherwise observed.

It should be noted that by not taking action against such "informal occupations", the City does not risk losing ownership or control of lanes regardless of the length of occupation and there is nothing preventing the lane from being opened in the future if needed. The practice of occupying untraveled lanes is commonplace and widespread across Ontario, and indicates that property owners have found this to be a satisfactory solution to

combating vacant lane problems.

To be clear, if a property owner chooses to fence in and occupy an untraveled lane, they do so at their own risk and expense and implicitly accept that they are responsible for removing the fence and any obstructions should the City or another property owner wish to use the lane for its originally intended purpose.

There is also an option for a property owner to enter into a license agreement with the City to temporarily occupy an untraveled lane. Such license agreements typically involve an annual fee, require the property owner to carry insurance and contain a termination clause permitting the City to end the agreement at any time. In London, however, no property owner has ever availed them self of this option, no doubt because “informal occupations” are less onerous from a paperwork perspective yet achieve similar results.

Finally, it must not be forgotten that the simplest solution available to property owners combatting vacant lane problems is to simply erect a privacy fence along their own property line. Privacy fences are widely used in neighbourhoods to protect properties and provide privacy and they are just as effective at separating properties from vacant lanes as they are at separating neighboring properties.

Notwithstanding the challenges surrounding vacant lanes, the current policies and practices provide property owners with sufficient options to enable them to deal with vacant lane problems as they deem appropriate. Therefore no changes to the City’s policies are needed in regards to vacant lanes.

Lanes in Other Municipalities

The challenges that lanes present are not unique to London. Although some municipalities have formally assumed certain traveled lanes, particularly in the downtown areas (there are essentially no public lanes in downtown London, only privately owned alleyways), many municipalities only provide limited surface maintenance similar to what London offers. The problems resulting from untraveled lanes are also common, which often has resulted in the abutting owners taking over and occupying lanes as has been done in London. Although some municipalities require encroachment agreements in these instances, enforcement is not a priority. A few municipalities have adopted or are considering a subsidized program to dispose of untraveled lanes to the abutting property owners. Unfortunately, their experience mirrors that of London’s, in that it is nearly impossible to achieve a 100% disposition rate even when the closing process is subsidized, which inevitably leads to the problem of lane fragmentation. In summary, none of the other municipalities’ experiences are particularly instructive, as London’s lane policies are, broadly speaking, typical compared to other municipalities in Ontario.

<b>CONCLUSION</b>
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The City’s lane closing policies are designed to serve and protect neighbourhood interests as well as the City’s interests, which must take precedent over individual property owners’ wishes. Although most lane maintenance is left to the abutting owners to deal with as they deem appropriate, the City does offer limited surface maintenance on an as-requested basis which appears to satisfy most property owners that rely on lanes. Where untraveled lanes lead to problems for abutting property owners and a permanent closing is not possible, there are options available to the property owners who are free to choose which is best for them.

When considered together, the City’s lane policies and practices meet the needs of most Londoners and therefore no changes are recommended, it being noted that special situations can always be brought to Council for appropriate resolution.

<b>PREPARED BY:</b>	<b>REVIEWED AND CONCURRED BY:</b>
<b>A GARY IRWIN, OLS, OLIP MANAGER OF GEOMATICS AND CITY SURVEYOR</b>	<b>DOUG MACRAE, P.ENG., MPA DIRECTOR ROADS AND TRANSPORTATION</b>
<b>RECOMMENDED BY:</b>	
<b>KELLY SCHERR, P.ENG., MBA, FEC MANAGING DIRECTOR, ENVIRONMENTAL &amp; ENGINEERING SERVICES AND CITY ENGINEER</b>	

April, 2019

cc: M. Koch Denomme