



## OPERATIONS DEPARTMENT

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March 26, 2021

Isaiah Thorning, Committee Clerk  
Standing Committee on General Government  
99 Wellesley Street West  
Room 1405, Whitney Block  
Queen's Park  
Toronto, ON

Dear Sir:

**Re: The Corporation of the City of Markham's Comments on  
Bill 257, Supporting Broadband and Infrastructure Expansion Act, 2021**

On behalf of the City of Markham, I submit the following comments with respect to the proposed *Building Broadband Faster Act, 2021* (the "Act") that is being proposed through Bill 257.

It is submitted that the following areas of the Act require clarification from the Province. Such clarification should be set out in the Act, regulations, or policy.

1. What are the limitations to the scope and extent of an order issued by the Minister under s. 15 of the Act ("Minister's Order") and how are cost and inconvenience to a municipality considered?
2. How long can the Minister's Order require that a municipal roadway be closed temporarily?
3. To what extent can a municipal roadway be modified by a utility under a Minister's Order (i.e. either its horizontal and/or vertical alignment)?
4. Can the Minister request the relocation of any existing utility infrastructure, and to what extent (i.e. a service, a mainline, trunk and transmission mains)?
5. What is the definition of "reasonably promptly" with respect to the requirement in s. 14 of the Act that a municipality and the proponent of a designated project shall enter "reasonably promptly" into negotiations for terms of access? How long will the Minister allow the municipality and the proponent to negotiate for?
6. The Act, s. 24 imposes Administrative Penalties on persons who do not comply with the Act, up to a maximum of \$500,000. The Act does not define "person". Does a "person" include a municipality?

7. The Act, s. 21 imposes a 10 day deadline to supply locates. Will there be a warning and grace period after the 10<sup>th</sup> day that locates are not supplied, or will a Minister authorize the Contractor to proceed to dig without locates on the 11<sup>th</sup> day?
8. What is the relationship between the Act and the federal *Telecommunications Act*, which currently has jurisdiction over telecommunication carrier projects?

The City submits that it has the following concerns about the impacts of the following areas of the Act on the City's operations, and recommends the following:

1. The Act, ss. 11 to 20 removes a municipality's autonomy over its right of way. It is important that municipalities have autonomy and the ability to make decisions for their rights of way. The municipality is best placed to make such decisions because the municipality has intimate knowledge of present and future planned projects and can make a knowledgeable decision based on all relevant factors. The City submits that the Minister's authority to order access to a municipality's right of way be limited, and that the municipality should be given an opportunity to deny placement of infrastructure at a certain location if the municipality feels it is not in its best interest. Municipalities must also be given a fair and reasonable amount of time to negotiate terms of access with the proponent and make a decision prior to the Minister stepping in to order access.
2. The Act, s. 15 removes the incentive for a telecommunications company to negotiate a Municipal Access Agreement ("MAA") in good faith with a municipality. MAAs are lengthy agreements that can take a substantial amount of time to negotiate in good faith. Negotiation of terms of access are best left to the private contracting parties who will be doing the work and who will be impacted by the work, namely the telecommunications company and the municipality. The Minister's Order may not include terms that are appropriate for the individual parties. The Minister's authority should be limited and the contracting parties should be given autonomy over their MAAs.
3. Further, a municipality should not be required to compensate a proponent for losses incurred due to a municipality's failure to negotiate an MAA "reasonably promptly", as set out in s. 18. "Reasonably promptly" is undefined and open to interpretation, and this will expose the municipality to costs and litigation where a proponent feels they are owed compensation. Where there are legitimate reasons for a delay in negotiations, a municipality should not be required to compensate a proponent.
4. The Act, s. 21 gives authority to the Minister to allow an entity to excavate without locates. If a Contractor digs without locates, this may result in injuries, loss of life, and damage to or losses of existing services. This may impact existing utility owners and end users. The Minister's authority should be limited to emergency situations, and there should be a grace period after the 10-day time limit has elapsed to allow for locates to be provided.
5. Further, where the Minister has authorized a person to excavate without locates, the Act, s. 21 prevents the utility owner from making a claim against the person who did the excavation work. The Act leaves no recourse for the claimant for damages. Where the excavation work causes damage to property or persons, the impacted parties should have recourse against the entity that performed the excavation, as that entity knowingly took on the risks of doing the work without locates.

6. While the Act, s. 16(2)(1) provides that the terms of the Minister's Order may include notification to the public, the Act appears to remove active stakeholder consultation and engagement. The level of disruption can vary depending on the scope of the project and if this is the case, there will be no opportunity for a municipality to address and/or accommodate conflicts or concerns that are raised.

Yours truly,



Morgan Jones  
Director, Operations