



The Corporation of the City of Cornwall
Regular Meeting of Council
Report

Department: Infrastructure and Municipal Works
Division: Infrastructure Planning
Report Number: 2021-60-Infrastructure and Municipal Works
Prepared By: Michael Fawthrop, Division Manager
Meeting Date: June 28, 2021
Subject: Rainbow Crosswalks in Celebration of Pride Week

Purpose

To provide Council with further information regarding the request for Rainbow Crosswalks in Celebration of Pride Week in the community, as requested in a motion approved at the June 14, 2021, regular meeting.

Recommendation

- a. That Council receive Report 2021-60-Infrastructure and Municipal Works.

Background / Discussion

Rainbow Crosswalk

At the May 10, 2021, regular meeting, Council approved a motion which requested that "Administration prepare a report by Monday, June 14, 2021, that outlines the feasibility, cost, potential crosswalks or alternative locations and any other key details required to support Diversity Cornwall in celebrating Pride week by painting a rainbow crosswalk in a prominent location in our City".

At the June 14, 2021, regular meeting, Council received Report 2021-57-Infrastructure and Municipal Works which is attached to this report. At the same meeting, Council endorsed the implementation of the Clock Tower Mural in



Celebration of Pride Week and directed Administration to prepare a follow-up report on the painting of a rainbow crosswalk for the meeting of June 28, 2021.

As indicated in the previous report, roadway line painting, which includes the painting of crosswalks, is provincially regulated and must follow the Ontario Traffic Manual (OTM). As such, the line painting of crosswalks in the City follows the design standards, details and specifications which are mandated in the OTM. The OTM includes exact specifications on the colour and reflectivity of the paint used for roadway line painting. The line painting at crosswalks provides a basic form of regulatory protection for the pedestrian crossing the road.

The Transportation Association of Canada (TAC) Pedestrian Crossing Control Guide acts as another guideline for local governments to follow in order to ensure that crosswalks are uniformly implemented across the country. Along with the OTM, the TAC Pedestrian Crossing Control Guide considers the posted speed limit, cross section of the roadway, distance to the nearest alternate crossing, number and types of pedestrians and vehicular volume as indicators for the type of crosswalks to be installed.

As indicated in the previous report, Rainbow Crosswalks or any other form of artistic crosswalks do not comply with the design standards, details and specifications for crosswalks as mandated in the OTM and TAC. If crosswalks were not painted in accordance with the OTM and/or TAC, the City could likely be held liable if an accident ever occurred.

Administration is aware that some municipalities across North America have implemented Rainbow Crosswalks in order to celebrate 2SLGBTQ+ awareness and rights. Although some municipalities are implementing Rainbow Crosswalks on either a temporary or permanent basis, these municipalities are doing so assuming the increased risk and liability associated with a non-compliant crosswalk.

Typically in other municipalities, these crosswalks have been implemented at lower volume and lower speed intersections likely due to the associated risk and liability. Should Council elect to issue direction to Administration to proceed with a Rainbow Crosswalk, it is recommended that an intersection be selected which is smaller in size, has modest traffic volumes and lower vehicle travelling speeds in order to mitigate some of the risk. Additionally, it is recommended that only one side of the intersection crosswalk be painted in order to reduce some of the risk and mitigate cost.

As indicated during the June 14, 2021, regular meeting, TAC is currently in the midst of completing a study on Non-Standard Pavement Markings for Crosswalks which will include a formal review of Rainbow Crosswalks and other forms of artistic crosswalk designs. The study was initiated by TAC as provincial and municipal authorities are frequently asked to implement non-standard crosswalk designs as part of a placemaking initiative, to improve aesthetics in an area or to show the support for a cause. Currently, any form of artistic crosswalks are not approved for use by TAC or MTO as no comprehensive studies have been completed on the impact of non-standard crosswalk markings on public safety in Canada and any other publicly available research/studies are very limited. The results of the study which will be conducted by TAC will be released as a formal report with findings eventually being incorporated into a future update of the Manual of Uniform Traffic Control Devices for Canada.

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The project will research non-standard pavement marking for crosswalks in an effort to understand their impact on:

- Driver perception and recognition of crosswalks;
- Driver and pedestrian distraction;
- Slip and skid resistance; and
- Recognition by automated driving systems.

Additionally, the project tasks are summarized as follows:

- An extensive literature review;
- Primary research to collect data on recognition/conspicuity and driver/pedestrian distraction;
- Additional research regarding impacts on slip/skid resistance and recognition by automated driving systems;
- Simulation testing;
- Analysis of collected data; and
- Development of recommendations regarding non-standard pavement markings for crosswalks.

The final deliverable for the project will be a resource document which will include recommended practitioner guidance which will eventually be added to the Manual of Uniform Traffic Control Devices for Canada. Originally, the study was to be completed by 2021; however, TAC just recently confirmed that the schedule of the study has been impacted as a result of the pandemic and has been delayed to the Fall of 2022. Once the study has been completed, TAC will provide formal guidance on these types of installations which will likely include approved Rainbow Crosswalk designs and specifications should the results of the study indicate that approved Rainbow Crosswalk designs do not pose a risk/liability to motorists and pedestrians.

Should Council elect to proceed with instituting a Rainbow Crosswalk within the City's road network prior to the TAC study being completed, it is likely that the Rainbow Crosswalk design which is implemented would not be compliant with the guidance provided by TAC and/or MTO; therefore, it will still pose a significant risk/liability to the City. In this event, Administration would need to recommend that the previously installed Rainbow Crosswalk be removed and a TAC/MTO approved design be implemented. As included in the previous report to Council, the cost to install a permanent thermoplastic Rainbow Crosswalk within the City's road network is estimated to be \$10,000 to \$15,000 for one side of an intersection depending upon the size, location and design. Thermoplastic is very expensive to remove after it has been installed due to how well it bonds to the asphalt surface. If the City were to remove an existing thermoplastic crosswalk and implement an approved design, the overall project cost would likely be between \$30,000 to \$40,000.

As such, Administration is recommending that Council not proceed with installing a permanent thermoplastic Rainbow Crosswalk within the City's road network until the TAC study has been completed and formal guidance has been issued.



Once formal guidance is issued by TAC, Administration proposes to bring a report back to Council which would include the following:

- Summary of the results of the study issued by TAC;
- Summary of the guidelines, design standards, specifications, etc., included in the study;
- Discussion on potential locations, approved design selection, schedule and associated costs;
- Consultation with local 2SLGBTQ+ advocacy groups such as but not limited to Diversity Cornwall on potential prominent locations, selecting a TAC approved design, etc.;
- Consultation with BIA's on location, design, etc.; and
- Public consultation on location, design, etc.

Additionally, it is recommended that Council direct Administration to include a permanent thermoplastic Rainbow Crosswalk in the 2022 Capital Budget which is compliant with guidelines to be issued by TAC.

BFL Canada – Insurer

Please refer to the attached previous report on Placemaking which included a request for the artistic painting of crosswalks by volunteers within the City among other Placemaking initiatives. The attached report contained correspondence from the City's insurer, including commentary from the insurer's legal counsel. In summary, the City's insurer advised against implementing crosswalks which do not follow applicable standards due to the increased risk and liability for the municipality should an accident ever occur.

Following the June 14, 2021, regular meeting, Administration reengaged the City's insurer, BFL Canada, to provide updated commentary on the proposal for a Rainbow Crosswalk within the City's road network. Please refer to the attached letter from BFL Canada dated June 24, 2021. As indicated previously, BFL Canada continues to advise the City to not implement a Rainbow Crosswalk due to the risk and liability associated with a non-compliant crosswalk.

BLG – Legal

Following the June 14, 2021, regular meeting, Administration sought an additional legal opinion from the City's legal firm, BLG. At the time of writing this report, a memorandum to be provided by BLG in regards to implementing a proposed non-compliant crosswalk was still pending. It will be circulated directly



to Council in advance of the meeting. BLG is advising the City to not implement a Rainbow Crosswalk due to risk and liability associated with a non-compliant sidewalk. Furthermore, BLG is in agreement with the analysis and commentary on risk/liability which was included within both staff reports on the matter.

BLG is not aware of any applicable case law on the matter as it likely has not been before the court system as of yet since these crosswalks have only been installed in some municipalities in recent years.

Additionally, the legal opinion provided by BLG is consistent with the legal advice provided by the City's insurer as part of both the Placemaking Report and the Rainbow Crosswalk Report.

Joint and Several Liability

Joint and several liability is a common law principle holding that those who have contributed to cause a single inseparable loss are each liable to the injured person for the full amount of the damage suffered. In Ontario, the joint and several provisions of the Negligence Act, indicate: "Where damages have been caused or contributed to by the fault or neglect of two or more persons...and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering the loss or damage." A defendant, who may be only 1% at fault, can be obligated to pay the plaintiff's entire judgment, particularly in cases where the other defendant(s) is unable to meet a court-ordered award. The joint and several liability legislation has placed disproportionate accountability onto municipal governments.

Since the proposed Rainbow Crosswalk is non-compliant with applicable standards and has not been tested as of yet, the City could be held liable if an accident were ever to occur at the proposed Rainbow Crosswalk even if the proposed crosswalk was not the main cause of the accident. The potential liability would also likely increase as Administration, the City's legal counsel and insurer have all advised against it.

Claims Process

In the case of injuries resulting from an incident on public property, upon receiving a claim, the City undergoes a diligent investigative process to determine cause, location, date, and potential liability. This includes an analysis of all relevant internal records along with conversations with the departments and individuals involved. For example, in the case of a slip and fall claim, records



gathered from relevant departments may include sidewalk maintenance records, sidewalk inspection records, pre and post incident weather records, winter control records (if applicable), and pictures of the location of loss. As a part of our fact-gathering process, we compare our internal records with relevant legislations and standards in place.

The best safeguard available to municipalities in defense of an injury claim are the legislations and standards set out by the provincial and federal governments, including the Minimum Maintenance Standards, the Municipal Act, and the Occupiers' Liability Act. These pieces of legislation codify the municipality's responsibilities and allow the municipality to refute liability if those responsibilities are fulfilled. Through this process, municipalities are able to use relevant legislations to show that they were not negligent. In the absence of legislation or if a municipality is not following current legislation, the municipality may be found to have breached its duty of care and may be held liable for damages resulting from this negligence.

Meeting with Diversity Cornwall

Administration met with Diversity Cornwall on June 22, 2021, to discuss the Rainbow Crosswalk proposal as well as the Clock Tower Mural. Following the meeting, Diversity Cornwall provided a letter summarizing their position on both projects. Please refer to the attached letter from Diversity Cornwall dated June 22, 2021. Diversity Cornwall expressed to the City that the board receives many requests for a Rainbow Crosswalk in the City similar to those found in other municipalities. Diversity Cornwall was understanding of Administration's position that these crosswalks are not compliant with applicable standards. As indicated in the attached letter, Diversity Cornwall supported the Justice Building as a potential location.

Additional Recommendations

Although some municipalities are implementing Rainbow Crosswalks on either a temporary or permanent basis, these municipalities are doing so assuming the increased risk and liability as they are not compliant with OTM or TAC guidelines. Even though some municipalities are installing these crosswalks, Administration is professionally obligated to advise that these crosswalks are not compliant with legislation and have not been safety tested by TAC or MTO as of yet. As such, Administration cannot recommend that these crosswalks be implemented due to the associated increased risk and liability to the municipality.

Municipalities who have proceeded with these crosswalks have either used approved line paint or thermoplastic. Typically, municipalities which have implemented these crosswalks on a temporary basis, usually for the duration of Pride Week/Month, have used approved line paint due to the lower cost and ability to remove. Line paint is generally only used on a temporary basis as it typically wears off quickly especially in new applications and would require successive paint coats. In order to help address the slipperiness of a large painted surface when wet, a non-slip additive can be used to improve traction. The use of line paint within the City's road network even with a non-slip additive would be discouraged as it is a non-approved crosswalk and it will wear off very quickly. The use of line paint with a non-slip additive would only be recommended as a temporary installation for a defined period of time. It should not be considered for use within the City's road network. Possible consideration could be to install a temporary rainbow crosswalk using a non-slip additive for a defined period of time such as Pride Week or Pride Month in an area with high visibility such as the Justice Building, Benson Centre, Civic Complex, etc. The City of Kingston has recently undertaken a similar initiative in front of City Hall where the paint will be installed for Pride Month to celebrate 2SLGBTQ+ awareness and rights and will be removed at the end of June. Please refer to further information regarding the City of Kingston project found at the following link: <https://globalnews.ca/news/4244802/rainbow-crosswalk-kingstons-pride/>. Further information can also be found on the City of Kingston website at the following link: <https://www.cityofkingston.ca/-/city-shows-its-support-for-lgbtq-community>. The estimated cost to install a temporary rainbow crosswalk on a City property would be estimated to be \$5,000 plus the cost to remove it. Line paint would not be recommended as a permanent solution as the maintenance costs associated with continually repainting an area would exceed the cost of installing thermoplastic as discussed below.

As indicated in the previous report, some municipalities which have implemented these crosswalks on a permanent basis have elected to use thermoplastic markings in lieu of line paint. As indicated above, line paint is discouraged due to the maintenance costs associated with continually having to repaint the area, the large surface becoming slippery when wet, poor durability, etc. Thermoplastic markings are essentially plastic markings which have been melted into the pavement surface with heat. The benefit of these markings is that it can last up to 5 years depending upon the application and it provides increased traction for pedestrians compared to line paint. The disadvantages of thermoplastic is the initial capital cost and the cost to remove it after it has been placed. As such, thermoplastics are typically installed when the application is intended to be

permanent. As previously indicated, the cost of the application to one crossing at an intersection could range from \$10,000 to \$15,000 depending upon the size of the intersection. It is difficult to provide an exact cost of the application as the cost is dependent upon the design of the Rainbow Crosswalk as various alternatives exist, the size of the crosswalk/intersection, the number of crossings to be painted, the traffic control required, etc. Although some municipalities have instituted these crosswalks using thermoplastic, Council should be reminded that these crosswalks still do not comply with legislation and would still expose the municipality to liability should any type of accident ever occur at the intersection.

As indicated above, if a crosswalk were to be installed within the City's road network prior to the completion of the TAC study, it is possible that the crosswalk may need to be removed and replaced at a significant cost at a later date. As such Administration is recommending that Council not proceed with installing a permanent Rainbow Crosswalk until the study has been completed and formal guidance has been issued.

Should Council issue direction to proceed with a permanent thermoplastic crosswalk this year, it likely could not be installed until the Fall as the City would need to prepare a proposed design, consult advocacy groups, issue and award a competitive request for quotation, etc. As previously indicated in the past report, the location of Pitt Street and Second Street which was previously discussed would be discouraged due to the traffic volumes, speeds, size of the intersection, etc. Additionally, the increased vehicle traffic, turning movements and speeds will also likely decrease the lifespan of the product and subject it to tire markings. If Council issued direction to install a rainbow crosswalk within the road network, the intersection of Pitt Street and First Street which was discussed at the recent meeting would likely be a good candidate as it is a stop controlled intersection with lower travelling speeds and lower volumes. If Council directed Administration to install a crosswalk within the City's road network once the TAC study was completed and guidance was issued, the location of Pitt Street and First Street would likely be recommended as the preferred location. Additionally, consideration could be given to installing the permanent thermoplastic crosswalk within the property of a City facility such as the Justice Building, Benson Centre, Civic Complex, etc. In the recent meeting with Administration and members of Diversity Cornwall, Diversity Cornwall indicated a preference for the Justice Building location due to its prominence, proximity to police services and public presence which may dissuade potential vandalism, etc.

Administration recommends that Council direct staff to prepare a report on the implementation of a Rainbow Crosswalk once guidelines and standards have



been issued by TAC following the completion of the study. Once formal guidance has been issued by TAC (expected in 2022), Administration will prepare a report to implement a Rainbow Crosswalk in a prominent location in the City in accordance with applicable guidelines. The report will include consultation with local 2SLGBTQ+ advocacy groups such as, but not limited to Diversity Cornwall as well as the BIA's, the general public, etc., on the potential locations, the selected design, etc. Administration also recommends that Council direct staff to include the implementation of a permanent thermoplastic Rainbow Crosswalk which is to be installed in a prominent and visible location in the 2022 Capital Budget submission which is to be compliant with TAC and/or MTO standards once the study is completed and guidelines have been issued.

Document Title:	Rainbow Crosswalk in Celebration of Pride Week - Follow-up - 2021-60-IMW.docx
Attachments:	- BFL Letter - Rainbow Crosswalk.pdf - Diversity Cornwall - Crosswalk.pdf - 2021-57-IMW - Rainbow Crosswalk in Celebration of Pride Week.pdf
Final Approval Date:	Jun 24, 2021

This report and all of its attachments were approved and signed as outlined below:

Michael Fawthrop - Jun 24, 2021 - 2:41 PM

Bill de Wit - Jun 24, 2021 - 3:03 PM

Mark A. Boileau - Jun 24, 2021 - 3:37 PM

Tracey Bailey - Jun 24, 2021 - 3:44 PM

Maureen Adams - Jun 24, 2021 - 4:26 PM