



**STAFF REPORT  
ACTION REQUIRED  
Confidential Attachment**

**York University Secondary Plan Update – Application of  
City By-Laws re: Parking Enforcement**

<b>Date:</b>	October 21, 2009
<b>To:</b>	North York Community Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 8 – York West
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions and contains solicitor client advice.
<b>Reference Number:</b>	

**SUMMARY**

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This report responds to a request from City Council to advise how the City can require York University to adopt the City wide procedures established for parking enforcement within the context of the York University Secondary Plan. It is not recommended that the York University Secondary Plan be amended to deal with parking enforcement issues. This is more appropriately handled through the City’s licensing powers.

Who has jurisdiction over parking enforcement within York University’s campus is a complex issue, long outstanding between the City and York University. It is highly likely that any attempt by the City to require York University to comply with City By-Laws with respect to parking enforcement will be challenged in court. The confidential attachment provides solicitor client advice on this request.

**RECOMMENDATIONS**

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It is recommended that:

1. The confidential information in Attachment 1 remain confidential;

2. this report be received for information and no further action taken pending receipt of a final determination in the case of *Municipal Parking Corp. v Toronto*; and
3. Once a final decision is released, the City Solicitor report back on options, if any, available to the City in light of the court decision.

## **FINANCIAL IMPACT**

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The recommendations will have no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

At its meeting held May 25, 26 and 27, 2009 City Council adopted Item NY26.39, a status report from City staff on the York University Secondary Plan Update and requested additional information with respect to the secondary plan, including a request that "the appropriate City staff report to City Council through the North York Community Council at the same time as the final report on the York University Secondary Plan update on requiring York University to adopt the City-wide procedures for parking enforcement and include any appropriate provisions to address this in the secondary plan". The report can be found at:

<http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-05-25-cc36-dd.htm>

This report responds to that request. The companion report from the Chief Planner, entitled "Final Report – York University Secondary Plan Update" addresses all other additional information requested by City Council.

## **ISSUE BACKGROUND**

In 2004, in response to complaints from the public about abusive and misleading parking enforcement practices used by some private parking enforcement agencies and commercial parking lot operators, the City enacted By-Law 725-2004 to amend the City's licensing regulations in relation to businesses that operate commercial parking lots or perform parking enforcement services on private property. This by-law requires all private parking enforcement agencies to obtain a license and prohibits the issuance of any form of demand for payment relating to unauthorized parking other than a Parking Infraction Notice under Part II of the *Provincial Offences Act*.

York University takes the position that it is exempt from the City's licensing powers with respect to parking regulation on its campus. It has enacted its own Parking & Traffic Regulations relying on the powers granted to it under the *York University Act, 1965, S.O. 1965, c. 143*.

## COMMENTS

The issue of parking regulation on university campuses, and specifically enforcement measures (such as the imposition of fines and withholding academic records) has been challenged recently in British Columbia. A class action suit against University of British Columbia (UBC) was successful and UBC was ordered to reimburse up to \$4,000,000 in unlawfully collected fines. However, in that case the plaintiffs did not challenge UBC's right to regulate parking on its campus and, unlike the position taken by York University, UBC conceded that it did not have the power to impose fines under its parent legislation. Subsequently, the province of British Columbia has tabled Bill 13 – 2009 which retroactively amends the *University Act*, R.S.B.C.1996, c.79 to grant the necessary powers to effectively reverse the court decision. As such, the decision is of little relevance to the situation at hand.

We are not aware of any court challenge made against York University's reliance on its legislated powers to pass parking and traffic regulations.

City of Toronto By-Law 725-2004 has itself been the subject of a number of court challenges. The court in *Imperial Parking Canada Corp. v Toronto* held that the use of appropriate signage can create a consensual relationship between the parking lot operator and user such that the by-law does not apply. Another case challenging the validity of the By-law (*Municipal Parking Corp. v Toronto*) is still before the court.

The confidential attachment provides solicitor client advice with respect to this issue.

## CONTACT

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## SIGNATURE

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Anna Kinastowski, City Solicitor

## ATTACHMENTS

Confidential Information