

Further Report on the Implementation of a Fixed Fine System for Parking Tickets

Date:	August 30, 2011
To:	Government Management Committee
From:	Treasurer and City Solicitor
Wards:	All
Reference Number:	P:\2011\Internal Services\rev\gm11014rev (AFS 14213)

SUMMARY

This report:

- a) responds to the Government Management Committee's request for a more detailed range of options for dealing with parking ticket recipients who request a trial and fail to appear in court; and,
- b) provides further information and options and revised recommendations with respect to the implementation of a Fixed Fine system for parking offences to apply in cases where a scheduled parking ticket trial results in a conviction (i.e., where the defendant either pleads guilty or is found guilty), as originally set out in a staff report dated June 13, 2011 (Item GM5.6 "Implementation of a Fixed Fine System for Parking Tickets").

RECOMMENDATIONS

The Treasurer and City Solicitor recommend that:

1. Council adopt the recommendations contained in the staff report dated June 13, 2011 (Item GM5.6 "Implementation of a Fixed Fine System for Parking Tickets"), with the following amendments:
 - a. Amending Recommendation 4 to delete the reference to reducing the set fine for accessible parking offences, so that the recommendation reads:
 4. The City Solicitor make the necessary application to the Regional Senior Judge for new set fine orders.

- b. Adding a new Recommendation 5 as follows:
 5. The City Manager request that the provincial Attorney General increase the current regulated costs of \$12.75 that are added to the set fine amount for a ticket where a parking ticket recipient requests a trial but fails to appear in court on the scheduled trial date, so that the regulated fee reflects the actual costs incurred by municipalities in these circumstances.

Financial Impact

A fixed fine system for parking tickets is expected to result in a reduction in the number of trial requests made by parking ticket recipients who request a trial only to obtain a reduced fine or in the hope that the issuing officer will not attend court. Reductions in the number of trial requests will free up court capacity and make more efficient use of court resources to hear parking ticket trials and trials for other more serious traffic offences, improve the time to trial where a trial request has been made, and reduce the costs incurred by the City to administer and schedule trial requests where there is no dispute.

Actual savings in reduced court operation costs or offset revenues that will result from the introduction of a fixed fine system cannot be estimated with accuracy, given that the effectiveness of a new system in reducing unnecessary trial requests will depend on both consumer behaviour and actual court outcomes.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of June 28, 2011, the Government Management Committee deferred consideration of Item GM5.6 “Implementation of a Fixed Fine System for Parking Tickets” to its meeting of September 15, 2011, and requested that the Treasurer and City Solicitor report back on a more detailed range of options for dealing with parking ticket recipients who request a trial and fail to appear in court. The decision document of the Government Management Committee, and the original report from the Treasurer and City Solicitor dated June 13, 2011, are available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.GM5.6>
<http://www.toronto.ca/legdocs/mmis/2011/gm/bgrd/backgroundfile-39106.pdf>

ISSUE BACKGROUND

The staff report from the Treasurer and City Solicitor dated June 13, 2011 (GM5.6 “Implementation of a Fixed Fine System for Parking Tickets”) identified that a trial before a Justice of the Peace was requested in 307,000 cases in 2010, or roughly 11 per cent of the 2,800,000 parking tickets issued that year. The percentage of parking ticket recipients requesting a trial has risen steadily each year, from approximately 2.5% in 2004 to 11% in 2010.

The fixed fine system proposed in that report, and recommended herein, will apply where a parking ticket recipient requests and attends a trial and a conviction results (i.e., the defendant either pleads guilty or is found guilty at trial). In keeping with the Core Service Review opportunities identified by KPMG with respect to considering higher Court Services fees and seeking opportunities to streamline Court operations, the proposed fixed fine system is expected to provide the following benefits:

- i) early resolution of parking tickets, by providing a financial incentive for out-of-court resolution when there is not an issue to be tried;
- ii) a reduction in the number of trial requests made by parking ticket recipients who simply wish to obtain a reduced fine, because the justice at trial will no longer have the option of imposing a lower fine;
- iii) parking ticket trials scheduled in a timely manner, allowing defendants to receive a fair outcome without having to wait months for a trial date;
- iv) fewer parking ticket disputes stayed or withdrawn due to the length of time elapsed since the ticket was issued; and
- v) adequate court capacity and resources being available to hear parking ticket trials and other more serious provincial offences, by reducing the number of unnecessary trial requests.

COMMENTS

Trial Requests Where a Defendant Fails to Appear in Court

In 2010, approximately 268,170 requests for a trial before a Justice of the Peace were scheduled for parking ticket disputes. In 89,532 of these trial requests, or 33.4% of the total scheduled trials, the defendant (parking ticket recipient) failed to appear on their scheduled trial date. Where a defendant does not appear in court for a scheduled trial, the defendant is deemed to not wish to dispute the charge by his/her failure to appear and a conviction is entered.

In these cases, the Provincial legislation already stipulates that an additional \$12.75 for court costs be added to the set fine that appears on the ticket. Therefore, for a \$30.00 ticket, court costs of \$12.75 are added to the set fine, resulting in a total fine of \$42.75. The municipality retains the \$12.75 in court costs, as well as the set fine amount. The amount of court costs to be added are established under Regulation 945 under the *Provincial Offences Act* and apply to all municipalities across Ontario. The \$12.75 amount has not been increased since July 1, 1998, when it was increased from \$3.75 to \$12.75.

The City incurs direct operational costs for each trial request submitted. Each request must be made in person at one of the City's four (4) First Appearance Facilities (parking ticket counters), and then manually entered in the City's parking ticket management information system. The paper forms recording the trial requests are counted, sorted and

batched by Revenue Services staff, as the original trial request forms are required as part of the court documentation. Subsequently, Court Services staff must compile and sort trial requests by date and offence type, and prepare court dockets for trial proceedings, taking into account available court capacity and court locations. Notification of impending trials must be mailed to the vehicle owner or the person requesting the trial.

Hence where a trial has been requested and a defendant fails to appear, the City has already incurred substantial costs in administration, staff resources, and printing/ mailing costs to prepare for the trial. While the \$12.75 in costs added by provincial legislation when a defendant fails to appear is intended to recognize the expense incurred by a municipality, the \$12.75 amount actually recovers only a small proportion of the City's actual costs in scheduling a trial.

Data from Court Services suggest that the actual costs of scheduling each trial request (including the costs of court staff, prosecutor, justice of the peace, court security, and other administrative expenses required to support a trial) is roughly \$30 per trial request. These costs do not include the cost of police witnesses to attend trials. With the addition of the fee of \$8.25 that the City must pay to the Ministry of Transportation to procure certified vehicle owner registration documents before the trial is scheduled, the City's approximate costs of scheduling a trial are increased to \$38.25 per trial. The \$12.75 applied by the POA recovers only 33% of the actual costs incurred, and less than this percentage if police staff costs are included.

To address this disparity, this report recommends that the City Manager request the provincial Attorney General to increase the current regulated court costs of \$12.75 to an amount that reflects the actual costs incurred by municipalities in these circumstances. Given that this change would affect all municipalities in Ontario and may therefore require some consultation to determine an appropriate increase, and that the change would require an amendment to Regulation 945 under the *Provincial Offences Act*, the timing of any increase remains uncertain.

Should an increase to the regulated costs be enacted, additional revenues from the increased costs will increase net parking ticket fine revenues, and help offset operating expenditures for courts. It is important to note, however, that the recommended increase in the regulated costs would only apply when the defendant does not attend court on the trial date and that they would be added to the set fine amount for a parking ticket offence (the fine that appears on the face of the ticket). They would not apply to the system of fixed fines recommended in this report, as fixed fines will only apply where a defendant attends a trial and is found or pleads guilty in court.

Until such time as Regulation 945 is amended to prescribe higher court costs, the total fine for a parking ticket recipient who requests a trial and fails to appear will continue to be the set fine amount plus \$12.75 in regulated court costs. If the fine remains unpaid, the fine is then increased by a further \$20.00 once the parking ticket is forwarded to the Ministry of Transportation for collection, such that the owner's vehicle licence plate

cannot be renewed ("plate denial status"), until outstanding fines have been paid. This \$20.00 fee is retained by the Ministry.

Option to Establish Fees Applicable to Defendants who Request trials but Do Not Attend Court

One additional option considered by staff in preparing this report was the option of the City imposing fees or charges under the *City of Toronto Act, 2006* ('COTA') on defendants who request trials but then do not appear at their trials. Section 259 (1) of COTA does give Council broad authority to pass by-laws imposing fees or charges for services or activities provided or done by the City and possibly could be used to impose fees or charges in these circumstances.

This report does not recommend the imposition fees or charges under COTA due to the difficulty that would likely be experienced and the additional expense that would likely be incurred in trying to collect such fees and charges. The significant advantage of costs imposed by provincial regulation under the POA is that the costs are collectible as a fine under that statute. The very effective collection remedy of plate denial is therefore available in relation to those costs. There is no equivalent method of collection for fees and charges imposed by the City under COTA.

Further Options for a Fixed Fine System for Parking Tickets

The staff report from the Treasurer and City Solicitor dated June 13, 2011 (Item GM5.6 "Implementation of a Fixed Fine System for Parking Tickets") recommended a system of fixed fines that would apply where a parking ticket recipient requests a trial and the defendant either pleads guilty or is found guilty at trial.

The June 13, 2011 staff report recommended that the fixed fine amounts be \$12.75 higher than the existing set fine amount that appears on the face of the ticket, so that where a defendant attends a trial and is found guilty, the fine imposed by the convicting court could be no less than the set fine amount (the "face value" of the ticket), plus \$12.75. A presiding justice of the peace would not have the discretion to impose a lesser fine. Defendants found not guilty at trial would pay no fine. The rationale for setting the fixed fine amount higher than the set fine for a parking offence are set out in Table 1 below.

Table 1: Rationale for Fixed Fines

Encourages early resolution of parking tickets	A fixed fine system will encourage the early resolution of parking tickets, by providing a financial incentive for out-of-court resolution when there is not an issue to be tried, thereby minimizing unnecessary trial requests.
Reduces unnecessary trial requests	Trials may be requested by parking ticket recipients who do not intend to dispute the charge, but who request a trial and attend court in the hopes of obtaining a reduced fine amount, or in the hope that the issuing officer will not appear at the trial and the charge will be withdrawn, or in the hope that a trial will never be scheduled. The <i>Provincial Offences Act</i> does not currently provide for any recovery of the expenses associated with scheduling these trials. The recommended fixed fine system, with fixed fines higher than the associated set fine, provides for a partial recovery of the expense where a trial has been requested and results in a conviction.
Fixed fines parallel court costs allowed under the <i>Provincial Offences Act</i>	The recommended fixed fine system adds \$12.75 to the set fine amount where a conviction results at trial. The \$12.75 amount is intended to recover a portion of the municipality's direct costs in scheduling and holding a trial. The amount parallels the existing structure set out in the <i>Provincial Offences Act</i> that allows \$12.75 in court costs to be added to a parking ticket fine where a trial has been requested and the defendant fails to appear in court (no-shows).
Eliminates the possibility of obtaining a reduced fine in court	Of the 106,701 trial requests submitted in 2010 where the defendant appeared in court, approximately 59,530 (56%) of these trials resulted in fines imposed by the court that were less than the set fine amount for the offence (the fine amount that appears on the face of the ticket). Data on court convictions show that the average fine assessed by the courts is approximately 50% of the original set fine amount. This has created an unintended financial incentive that has led more and more parking ticket recipients to request a trial, even if they do not intend to dispute the ticket, in the hopes that they will receive a reduced fine. A fixed fine system will discourage such trial requests, by establishing that a parking ticket cannot be reduced in court on a finding of guilt.

Option to establish "Fixed Fines" equal to the "Set Fine" amount

Despite the rationale set out above for establishing fixed fines at an amount higher than the set fine amount for a parking offence, such that the municipality is able to recover a portion of the costs of scheduling and administering trials, Council may wish to consider the option of setting fixed fines equal to the set fine amount for an offence.

By setting fixed fines equal to the set fine amount, the amount that would be imposed in court on a guilty plea or a conviction at trial would be the amount that appears on the face of the ticket (the "set fine" amount). This would ensure that, by requesting a trial and appearing in court, defendants would not be able to obtain a reduced fine amount. Setting the fixed fine equal to the set fine preserves the right of an individual to appear in court to dispute a ticket without being exposed to a higher fine when convicted. This option does not, however, encourage the early or out-of-court resolution of parking ticket offences, and may not result in reductions in the number of trial requests submitted. With little or no reduction in the trial request rate, and no increase in the number of courtrooms dedicated to parking ticket trials, the wait time between offence and trial date will

continue to remain high. This will in turn impact the capacity to schedule and hear trials for parking tickets and more serious offences in a timely fashion, which may put at risk the City's ability to secure convictions in these cases due to the passage of time.

In terms of financial implications, establishing fixed fines equal to the set fine amount would ensure that where parking ticket trials result in convictions, parking ticket revenues would reflect the fixed fine amount on the face of the ticket. Given that approximately 56% of convictions at trial in 2010 resulted in a fine amount payable that was, on average, 50 per cent of the set fine amount, it can be expected that by setting fixed fines equal to the set fine amount would increase overall fine revenues. The actual increase in revenue cannot be accurately predicted, as this would depend on whether there was any change in the number of annual trial requests submitted under a fixed fine system, or any change in the percentage of trials that result in a guilty conviction.

Should Council wish to adopt a system of fixed fines where the fixed fine amount is set equal to the set fine amount, Recommendation 1 of this report may be amended by adding a further item 1(c), as follows:

- c. Amending Recommendation 2 to read as follows:

Council approve that the Fixed Fine Amounts be set equal to the presently-established Set Fines (the dollar amount that appears on the face of the ticket), with the Fixed Fine Amounts to apply where a parking ticket proceeding results in a conviction after a defendant in court either pleads guilty or is found guilty.

The reference to the fixed fine amounts set out in Attachment 1 to the June 13, 2011 report becomes redundant. The additional recommendations set out in this report remain valid.

Fines for Accessible Parking Offences

The original staff report from the Treasurer and City Solicitor dated June 13, 2011 (GM5.6 "Implementation of a Fixed Fine System for Parking Tickets") recommended that no fixed fine be prescribed for accessible parking offences (previously referred to as disabled parking offences), as these offences currently carry a statutory mandatory minimum fine established under the *City of Toronto Act, 2006* (COTA) of \$300.00.

The set fine for this type of offence was established at \$450.00 by the Regional Senior Justice of the Ontario Court of Justice at the request of the City. A set fine of \$450 was requested because the City's parking tickets at that time had a lower voluntary payment amount which applied if the ticket was paid within 7 days of it being issued. The voluntary payment amount could not be less than the minimum fine, and was usually two-thirds of the set fine. After the City eliminated the voluntary payment amounts in May 2004, the set fine for accessible parking offences remained at \$450.

To make the set fine for this type of offence consistent with the minimum fine of \$300.00 identified in the COTA, the June 13, 2011 staff report recommended that the set fine for

accessible offences be decreased from \$450.00 to \$300.00. In making this recommendation, it was felt that this would reduce the number of trial requests that are initiated by people receiving tickets for accessible parking offences, who would often go to court to obtain a reduction from the \$450 amount to the minimum fine of \$300, which is the common result. Data on trial requests from 2010 also suggest that at least half of all recipients of such tickets requested a trial.

However, given that tickets issued for accessible parking offences result in some offenders submitting payment of the full \$450 set fine amount, and that the minimum fine of \$300 will continue to apply in cases where a trial is requested (subject to any discretion exercised by a presiding Justice to reduce the amount in court to less than the \$300 minimum where circumstances warrant), this report amends the recommendation in the June 13 staff report to maintain the set fine amount for accessible parking offences at \$450.00. This will preserve the status quo for such offences, and therefore carries no revenue implications over present practices.

Summary

The recommended system of fixed fines is intended to promote the early resolution of parking tickets while preserving the public's right to dispute a parking ticket. It provides a financial incentive for out-of-court resolutions, and at the same time firmly reflects the principle that the fine imposed is not to be reduced through the court process.

By reducing unnecessary trial requests, residents can be assured of receiving a fair outcome without having to wait months for a trial date. This will in turn see fewer parking ticket disputes stayed or withdrawn due to the length of time that has elapsed since the ticket was issued, and will ensure that adequate court capacity and resources are available to hear parking ticket trials and other more serious provincial offences where trials are necessary.

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