



Status Update – Administrative Penalty System for the Red Light Camera and Future Automated Speed Enforcement Programs

Date: June 13, 2019

To: Infrastructure and Environment Committee

From: City Solicitor and Director, Court Services

Wards: All

SUMMARY

This report provides a status update on City Council's direction through Public Works and Infrastructure Item PW25.10 to investigate the feasibility of adopting an Administrative Penalty System (APS) for both the Red Light Camera (RLC) and future Automated Speed Enforcement (ASE) programs. An APS is an administrative dispute resolution structure that diverts matters from the provincial court system. The City's first APS was commenced on August 28, 2017 for parking violations.

The current provisions of the *Highway Traffic Act* ("HTA") and the Regulations under that Act, the *City of Toronto Act, 2006* ("COTA") and O. Reg. 611/06, Administrative Penalties do not authorize the City to proceed with an APS for ASE offences. In addition, current legislation and regulations do not allow RLC offences to be processed through an APS. This report recommends that City Council request the Province to enact and/or amend legislation and regulations to allow the City to implement an APS for RLC and ASE offences under the HTA with revenues from these offences being made payable to the City of Toronto to recover program costs. Without the enabling statutory and regulatory provisions, staff cannot provide a full feasibility report including program recommendations to City Council. Once those provisions are in place, staff will report back on the feasibility of adopting an APS for the RLC and ASE programs.

At its January 31st and February 1st, 2018 meeting, City Council requested the City Manager to expedite the development of the business case for information technology (IT) solutions to advance the development of the APS for consideration in the 2018 budget process. A new APS case management system that provides financial management functionality and can accommodate all existing and future charges under the City's APS is critical to ongoing APS operations. Given the scope and complexity of a new APS case management system, the project has already been presented to the Strategy Portfolio and Review Committee for 2020 IT capital budget approval. Staff are

currently developing a business case and will report to City Council through the 2020 budget process if additional capital funding is required to support the project.

RECOMMENDATIONS

The City Solicitor and the Director, Court Services recommend that:

1. City Council request the Province to amend the *Highway Traffic Act*, develop regulations under the *Highway Traffic Act*, potentially amend the *Provincial Offences Act*, and make any requisite amendments to any existing regulations to the *City of Toronto Act, 2006*, to permit the City of Toronto to use an Administrative Penalty System for offences enforced through the use of an Automated Speed Enforcement system and the Red Light Camera system and to ensure revenue from these offences administered through an Administrative Penalty System be payable to the City of Toronto to recover program costs.

FINANCIAL IMPACT

There are no financial impacts arising from this report.

The Chief Financial Officer and Treasurer has reviewed this report and agree with the financial impact information.

DECISION HISTORY

At its January 31 and February 1, 2018, meeting City Council adopted report Public Works and Infrastructure Item PW25.10 titled Vision Zero Road Safety Plan (2017-2021) Update. This report requested that the City Solicitor and the Director, Court Services investigate the feasibility of adopting an Administrative Penalty System for both the Red Light Camera Program and the future Automated Speed Enforcement Program. The report also requested the City Manager to expedite the development of the business case for IT solutions to advance the development of the Administrative Penalty System for consideration in the 2018 budget process.

<https://www.toronto.ca/legdocs/mmis/2017/pw/bgrd/backgroundfile-109445.pdf>

At its meeting of July 12, 13, 14 and 15, 2016, City Council endorsed the Road Safety Plan (2017-2021) and endorsed in principle the countermeasures and enhanced Road Safety Plan identified within the supplementary report (July 11, 2016). The report outlines the proposed safety countermeasures that will be implemented over a five (5) year period with the ultimate goal of eliminating traffic-related fatalities and serious injuries. The Council decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PW14.1>

At its meeting of July 12, 13, 14, and 15, 2016, City Council adopted Government Management Item GM13.12 titled Administrative Penalty System for Parking Violations. This report recommended that City Council approve the governance and administrative requirements to establish an Administrative Penalty System for Parking Violations that includes an Administrative Penalty Tribunal.

<https://www.toronto.ca/legdocs/mmis/2016/gm/bgrd/backgroundfile-93829.pdf>

COMMENTS

Legislative requirements for APS dispute resolution

Red Light Camera (RLC) and Automated Speed Enforcement (ASE) are offences created by the *Highway Traffic Act* (HTA). The Province is responsible for determining how an offence under provincial legislation is disputed. Offences are disputed either under the *Provincial Offences Act* (POA) through a court based system or through an administrative dispute resolution system (Administrative Penalty System - APS).

If the Province determines that an RLC or ASE offence under provincial legislation is eligible for an administrative dispute resolution process, legislative amendments will need to be made to the HTA and the POA allowing for an APS. In addition, the Province may decide to prepare supporting regulations to guide program design. While proposed Section 21.1 of the HTA allows for APS dispute resolution for offences under the HTA, this section has not been given effect at the time of this report. Supporting regulations concerning administrative dispute resolution for RLC and ASE offences have also not been established.

ASE and RLC implementation and ongoing operating costs are the municipality's responsibility. Proposed Section 21.1(13) of the HTA states that an administrative penalty that is not paid in accordance with the terms of the order imposing the penalty is a debt due to the Crown and is also enforceable as such. In order for the City to recover the costs of the RLC and ASE programs, provincial legislation needs to specify that revenues recovered from an APS are payable to the City of Toronto. This report recommends that Council request the Province to include this provision in its APS enabling legislation.

In order for the City to pursue the option of an APS for the RLC and future ASE programs, the Province must first proclaim in force Section 205.1 of the HTA and enact the requisite associated Regulation to allow for an ASE program, proclaim in force Section 21.1 of the HTA to allow for administrative penalties under the Act, and create regulations under Section 21.1 to allow for RLC and ASE enforcement through an APS.

Regulatory framework is required to assess APS feasibility

In order for City staff to assess APS feasibility, the statutory and regulatory provisions enabling APS for RLC and ASE offences must be in place. The regulatory framework sets the basic program requirements. Without a regulatory framework, staff are not able to assess APS feasibility or make program recommendations. Once the statutory and regulatory provisions are in place, staff will report to City Council on the feasibility of adopting an APS for the RLC and ASE programs.

Anticipated benefits of an APS for the RLC and future ASE programs

As demonstrated through the City's APS for parking violations, an administrative dispute resolution system provides many benefits from an operational and public service perspective. Assuming that APS enabling legislation for the RLC and new ASE programs is consistent with enabling legislation for parking under O. Reg. 611/06, the following benefits are expected to be realized.

An APS will allow RLC and ASE disputes to be heard faster than the provincial court system.

An APS can process disputes faster than the provincial court system allowing the City to process all disputes within a reasonable time period. According to Transportation Service's report to the June 27, 2019 Infrastructure and Environment Committee entitled "Automated Speed Enforcement Update and Results of the Request for Proposal 9148-19-0048 for the Provision of Automated Speed Enforcement Services", the ASE program is expected to generate additional charge volume. The provincial offences court system in the City of Toronto is operating at nearly full capacity. It is not able to absorb the additional charge volume from ASE program initiation within current facility and judicial resources.

An APS will improve customer service for those who choose to dispute.

The current court-based system requires customers to appear in-person to request a trial. This restriction is removed under an APS allowing for more on-line service delivery. With clear information being made available that explains the conditions to be met in order for a penalty to be varied or cancelled, supported by a shorter timeframe for a review and decision to be made along with greater use of technology in the process, an APS will assist in alleviating much of the frustration experienced by the public with the current court-based adjudicative process.

There are several situations that have led to non-payment in the court-based dispute process and the withdrawal of tickets. These include a customer not receiving a court date or disclosure in a reasonable amount of time or a requested interpreter not attending the court hearing. Disputes will be processed faster under an APS program eliminating time-related non-payments. Interpretation services can be provided via telephone removing the need for translators to appear in-person.

Post-conviction interventions continue to clog the court system. Under an APS, the decision of the Administrative Penalty Tribunal (APT) is final, eliminating multiple post-conviction interventions which may increase time to trial for others.

An APS will build capacity in the court system for the processing of more serious offences.

Under Provincial legislation, the judiciary is responsible for determining when courtrooms can be used and the nature and volume of charges that can be scheduled into each courtroom. Diverting RLC and ASE disputes from the provincial courts allows the judicial system to better balance the limited court space available so that trials can be held for more serious offences. Improved capacity in the court system also allows for faster times to trial and contributes to better judicial outcomes.

Requirements for Ongoing APS Operations

At its January 31st and February 1st, 2018 meeting, City Council requested the City Manager to expedite the development of the business case for IT solutions to advance the development of the Administrative Penalty System for consideration in the 2018 budget process. The current case management system (Parking Tag Management System - PTMS) was developed in a legacy programming language and modified along with other applications as a temporary solution to support the City's APS for parking violations.

PTMS is unsustainable as an APS case management system and cannot be modified to support expanded APS operations. A robust, flexible, and scalable APS case management system that provides financial management functionality and can accommodate all existing and future charges within the City's APS is necessary. Funding for PTMS replacement is currently allocated within Revenue Service's capital budget. At the time of this report, no funding has been allocated specifically to the development of a new APS case management system. Staff are currently developing a business case and will report to Council through the 2020 budget process if additional capital funding is required.

CONCLUSION

The City's Administrative Penalty System (APS) for parking violations demonstrates the customer service and operational value of removing matters from the provincial court system. In order for the City to implement an APS for the Red Light Camera (RLC) and future Automated Speed Enforcement (ASE) programs, the Province must enact APS enabling legislation for these offences. Provincial enactment of the required legislation in a timely manner and the ongoing development of a new APS case management system will allow the City to implement an APS for the RLC and future ASE programs as soon as possible. Staff will report to City Council on APS feasibility once the regulatory framework is in place.

This report recommends that City Council request the Province to make legislative amendments to permit the City to administer RLC and ASE offences through an APS and to ensure revenue from these offences are payable to the City of Toronto to cover program costs.

CONTACT

Russ Brownell, Policy, Planning & Project Advisor, Court Services, 416-338-2734,
russ.brownell@toronto.ca

Kalli Chapman, Director, Prosecutions, Legal Services, 416-392-8464,
kalli.chapman@toronto.ca

SIGNATURE

Wendy E. Walberg
City Solicitor
416-392-8078
Wendy.Walberg@toronto.ca

Susan Garossino
Director, Court Services
416-392-3835
Susan.Garossino@toronto.ca