STAFF REPORT
ACTION REQUIRED

Reinstatement of Licence Issuance and Fees for Private Parking Enforcement Agencies

Date: August 1, 2014
To: Licensing and Standards Committee
From: Executive Director, Municipal Licensing and Standards
Wards: All
Reference Number: P:\2014\Cluster B\MLS\LS14016

SUMMARY

At its meeting of November 30, December 1 and 2, 2004, City Council directed that the collection of Private Parking Enforcement Agency (PPEA) licence fees be suspended pending review and resolution of appropriate fees for this class of licence.

This report recommends the reinstatement of these licence fees and the reissuance of these licences, as well as outlines the issues and consumer impacts of PPEA operations.

Over the last several years, complaints concerning the activities of unlicensed PPEAs have continued to grow, and their activities have had an adverse impact on members of the public, as well as on the operations of legitimate PPEAs who have applied to be licensed with Municipal Licensing and Standards and who operate within the Toronto Police Service supervised Municipal Law Enforcement (MLE) Program.

The necessary amendments to the by-law will be the subject of a future report based upon a comprehensive review of Chapter 545, Licensing, Articles XXXVII, PPEA and XXII, Public Garages, which will be conducted in 2015 to address the growing number of complaints regarding commercial parking lots and enforcement activities, as well as recent court rulings.

Legal Services and the Toronto Police Service Parking Enforcement Unit were consulted in the preparation of this report.
RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council approve amendments to Toronto Municipal Code, Chapter 441, Fees and Charges, by deleting the Private Parking Enforcement Agency licence fees as set out in Appendix C – Schedule 12, Municipal Licensing and Standards, and adding the following licence fees for 2014, subject to annual inflation:
   a. Application fee: $383.00
   b. Renewal fee: $257.50

2. City Council authorize the Executive Director, Municipal Licensing and Standards, to reinstate the issuance of Private Parking Enforcement Agency licences and enforcement for non-payment of fees for this class of licence.

3. City Council authorize the Executive Director, Municipal Licensing and Standards, to assess the $257.50 renewal fee for Private Parking Enforcement Agencies:
   a. that were previously licensed with Municipal Licensing and Standards prior to City Council's November 30, December 1 and 2, 2004 decision to suspend the collection of Private Parking Enforcement Agency licence fees, and/or
   b. that have applied to be licensed with Municipal Licensing and Standards while the suspension was in effect.

4. City Council direct that the proposed changes come into force on October 1, 2014.

Financial Impact

There are 115 agencies currently operating under the Toronto Police Service supervised Municipal Law Enforcement Program. Staff estimate revenues of $29,612.50 for 2014, based on the issuance of 115 renewal licences at $257.50 per licence. The licence fees are subject to annual adjustments for inflation.

At this time, no additional staff resources are required for administering or enforcing these licences. Staff will report on any necessary refinements to the fee structures and the resources required at the completion of the review.

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 July 20, 21 and 22, 2004, City Council enacted By-law 657-2004 to amend Municipal Code, Chapter 545, Licensing, to establish new licensing fees for Private Parking Enforcement Agencies at $2,571.00 for initial application and $2,345.00 for annual renewal.


At its meeting of November 30, December 1 and 2, 2004, City Council re-opened the issue of licence fees for PPEAs for further consideration, with a request that the Commissioner of Urban Development Services, in consultation with the City Solicitor and the Chief Financial Officer and Treasurer, report to an upcoming meeting of the Planning and Transportation Committee to re-structure the licence fees related to this class of business and that all enforcement for non-payment of fees within this class of licence be suspended pending City Council's review of this matter and resolution of appropriate fees.


ISSUE BACKGROUND

On June 1, 2001, former Licensing By-law 574-2000 (now Municipal Code Chapter 545, Licensing) was amended to establish the requirement that all businesses providing parking enforcement services on private property within the City of Toronto be licensed as PPEAs. The amendment introduced regulation of PPEAs as a means to restrain unauthorized activities such as unregulated towing, issuance of ‘look-a-like’ tickets and/or collection of administrative fees. Licence fees for PPEAs were established at $186.00 for an initial licence and $88.00 for annual renewal.

On July 22, 2004, further amendments were made to Municipal Code Chapter 545, Licensing, due to continued concerns from members of the public regarding undue or exorbitant charges related to the removal and subsequent recovery of vehicles and the issuance of look-a-like tags by some PPEAs and commercial parking lot operators. The amendments were enacted to:

(1) broaden the definition of "Parking Enforcement Services" to capture any type of activity that attempts to enforce parking on private property without the consent of the owner or occupant;
(2) prohibit owners of businesses operating commercial parking lots from engaging in parking enforcement activities unless licensed as a PPEA or by using the services of a licensed PPEA;
(3) require PPEAs to employ Municipal Law Enforcement Officers (MLEOs) and ensure their parking enforcement activities are only undertaken by MLEOs;
(4) prohibit the issuance of any document, tag, ticket or notice, or request or demand for payment to vehicles parked on licensed property (in relation to businesses operating commercial parking lots) or private property (in relation to PPEAs) other than a parking
infraction notice under Part II of the *Provincial Offences Act*, a Toronto Police Service tow card or other document approved by the Chief of Police; and

(5) define what is included in the phrase "Issuance of a Document".

At its meeting of February 16, 2004, the Planning and Transportation Committee directed staff to conduct a comprehensive review of fees in the Urban Development Services Department in order to move to 100% cost recovery. Among the recommendations in the report back, staff proposed new business licensing fees for 2005 based on rates sufficient to cover the full costs of licensing administration and enforcement. Staff proposed new fees of $2,571.00 for an initial PPEA licence and $2,345.00 for annual renewal. On July 22, 2004, By-law 657-2004 was enacted to amend Municipal Code Chapter 545, Licensing, to establish these new business licensing fees.

However, at its meeting of November 30, December 1 and 2, 2004, City Council re-opened the issue of licence fees for PPEAs. The substantial increase in fees from 2004 to 2005 prompted further consideration by City Council. Staff were directed to report back to an upcoming meeting of the Planning and Transportation Committee to re-structure the licence fees related to this class of business through one, or a combination of a graduated schedule of fees based on the number of MLEOs employed by that company, and/or a realignment of approximately 4.5 to 5 percent of parking ticket revenue, which would offset administration and enforcement costs. City Council also directed that all enforcement for non-payment of fees within this class of licence be suspended pending City Council’s review of this matter and the resolution of appropriate fees.

This report has remained outstanding until this time.

**COMMENTS**

The Toronto Police Service (TPS), through its Parking Enforcement Unit, is responsible for parking enforcement in the City of Toronto. While the TPS issues the majority of the City's parking tickets each year, approximately 9% of all tickets are issued by MLEOs who are trained and certified by the TPS to issue parking tickets throughout the City, and are employed by agencies that are required to be licensed as PPEAs by ML&S.

**Current State of PPEA Licensing**

Resulting from City Council's directive to suspend the collection of PPEA licence fees, ML&S' Licence and Permit Issuing Office has not accepted payment for PPEA applications since December 2005 and payment for renewals since January 2007. ML&S has also ceased issuing and renewing licences, resulting in a total of 76 PPEA licences being held in abeyance in ML&S' licensing database. ML&S has continued to accept applications for PPEA licences, but only insofar as to allow PPEAs to obtain TPS' MLEO training and certification. Since 2005, ML&S has received a total of 127 applications, which were all referred to the TPS' Parking Enforcement Unit. TPS' Parking Enforcement Unit report that currently 115 agencies participate in the Police-administered MLE Program.
Complaints Regarding PPEA Activities

Over the last several years, complaints regarding unlicensed PPEAs have continued to grow. TPS' Parking Enforcement Unit is a major recipient of public complaints relating to ticketing and towing, reporting an average of 25 complaints per week. ML&S Licensing Enforcement also receives a considerable share of complaints, having received a total of 266 complaints in the last three years (33 complaints in 2011, 76 complaints in 2012, and 157 complaints in 2013). This results in considerable staff time spent investigating these complaints.

Some PPEAs are undertaking parking enforcement activities absent qualified MLEOs, are blanket tagging vehicles, and are issuing documents, tags, tickets, notices and invoices, including look-a-likes. Individuals have also complained that some PPEAs are charging undue or exorbitant fees that they do not have the authority to collect.

More recently, residentially-zoned parking properties are unlawfully providing commercial parking to members of the public and are employing unlicensed PPEAs to undertake parking enforcement activities. In some cases, parking meters are being installed. In others, signage is being posted to advise patrons that public parking is offered on the terms and conditions set out on the signs, however, there are no parking meters or attendants for patrons to pay and obtain a valid ticket or pass to display as proof of payment for parking.

Impact to Legitimate PPEAs

Unlicensed PPEAs have often been established to carry out activities not permitted by City by-laws. They are adversely impacting the operations of legitimate PPEAs who have applied to be licensed with ML&S and which operate within the TPS supervised MLE Program. According to TPS' Parking Enforcement Unit, legitimate PPEAs have lost 103 MLEO-patrolled properties to unlicensed PPEAs in the last year alone. For property owners, it has proven to be financially attractive to hire these unlicensed PPEAs as they often provide their services free of charge and actually pay property owners for acquiring their services.

There is a lucrative business for these unlicensed PPEAs, and it is at the expense of those PPEAs that operate legitimately. Although there is no way of tracking exactly how many parking violation and/or demand notices are being issued by these unlicensed PPEAs, TPS' Parking Enforcement Unit advise that the value of each invoice can range anywhere between $75 to $800, with most invoices averaging $300. Individuals who refuse to pay their invoices, have, in some instances, been threatened with small claims court action in amounts of thousands of dollars.

The increasing use of unlicensed PPEAs and the issuance of such invoices may be contributing to the decline in MLEO tag issuance. Revenue Services reports that in 2013, 191,775 parking tickets with an approximate total face value of $5.75 million were issued
by MLEOs—a decline from 2012, where 261,802 parking tickets with an approximate total face value of $7.85 million were issued.

**Reinstatement of PPEA Licence Fees and Licence Issuance**

Reinstating PPEA licence fees and the issuance of licences would protect consumers. It will strengthen ML&S' ability to enforce the by-law, bring problem operators before the Licensing Tribunal, and prosecute unlicensed activity. ML&S and the TPS' Parking Enforcement Unit are both in agreement that reinstating PPEA licence fees is essential to protecting members of the public and to restoring by-law controls as well as the overall integrity of the City’s parking enforcement operations program.

In determining the appropriate fees to be charged for a PPEA licence, current licence categories were examined and Public Garages were found to be comparable. As such, staff propose PPEA licence fees consistent with those charged for Public Garages: $383.00 for licence application and $257.50 for annual renewal.

Notices to advise of the City's intention to re-instate PPEA license issuance and fees have already been provided to all PPEAs that were formerly licensed, that have applied to be licensed, and that are part of TPS’ MLE Program. A public consultation meeting to discuss these matters and to inform businesses of the City's intent to reinstate fees and reissue licences was held on May 13, 2014.

At the public consultation, concerns were raised regarding the City's assessment of the licence application and licence renewal fees. Specifically, PPEAs previously licensed with ML&S (that is, prior to the suspension of the collection of PPEA licence fees), requested that they be assessed at the renewal fee. Much of their information would already be registered in ML&S' licensing database or kept on record, so that validation of business information simply would be required. Staff propose that PPEAs licensed with ML&S prior to the suspension as well as PPEAs that have applied to be licensed with ML&S during the suspension, be assessed at the $257.50 renewal fee.

If City Council authorizes the reinstatement of PPEA licence fees, staff will ensure that all PPEAs are provided further notice on the re-establishment of fees and the requirement to be licensed. Staff will also ensure that appropriate measures are taken to educate parking lot/property owners, along with members of the public, in relation to their rights and responsibilities. Staff recommend that these changes take effect on October 1, 2014.

Later this year, ML&S will be conducting a user fee review, at which time, these licence fees will be further assessed. Staff will report back to City Council on the results of this review through the 2015 budget process.
Review of the By-law

Amendments to Chapter 545, Licensing, are required in light of the Ontario Superior Court of Justice and the Ontario Court of Appeal rulings in the Imperial Parking Canada Corp. (Impark) v Toronto case.

In 2006, Impark brought court applications challenging the provisions of By-Law 725-2004, under which commercial parking lot operators are prohibited from carrying out parking enforcement activities except under the authority of a PPEA licence, and under which PPEAs licensed or required to be licensed by the City are prohibited from issuing any document or demand for payment other than a parking infraction notice under Part II of the Provincial Offences Act, a Toronto Police Service tow card or other document approved by the Chief of Police.

The court held that Impark's use of signage in its unattended lots expressly advises persons who may wish to park in those lots that Impark offers space for public parking on the terms and conditions set out in the signs. The posted signage indicates prior consent for vehicle owners to park, and was sufficient to create a consensual relationship between the parking lot operator and vehicle owners, such that the definition of "Parking Enforcement Services" and By-Law 725-2004 did not apply. Customers choose either to pay less by paying for parking fully in advance or to pay more later with the possibility that Impark may tow their vehicle. The fees which Impark collects are sums owing to it under contract, rather than damages for trespass.

In 2015, Municipal Licensing and Standards, in consultation with Legal Services, will undertake a comprehensive review of Chapter 545, Licensing, Articles XXXVII, Private Parking Enforcement Agencies and XXII, Public Garages to address the growing number of complaints regarding commercial parking lots and enforcement activities, as well as recent court rulings. The review will include research, stakeholder and public consultation, and a report to Licensing and Standards Committee with recommended by-law amendments.

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SIGNATURE

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