



**STAFF REPORT
ACTION REQUIRED**

**Commercial Parking Lots and Private Parking
Enforcement Agencies**

Date:	May 8, 2015
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2015\Cluster B\MLS\LS15010

SUMMARY

This report proposes amendments to Toronto Municipal Code, Chapter 545, Licensing, to remove existing regulations governing parking lots and parking stations from Article XXII, Public Garages, and create a distinct licensing category and article, "Commercial parking lots", with expanded provisions to regulate parking lot operators that demand compensation in relation to the use of a parking space.

This report also proposes amendments to the regulations governing Private Parking Enforcement Agencies (PPEAs) in Toronto Municipal Code, Chapter 545, Licensing, Article XXXVII, Private Parking Enforcement Agencies; Chapter 150, Municipal Law Enforcement Officers; and Chapter 915, Parking on Private and Municipal Property.

The proposed amendments establish a comprehensive set of regulations for commercial parking lot operators as well as clarify and expand the existing authorities of PPEAs—taking into account issues identified related to the commercial parking lot industry and the effect of previous court decisions regarding the PPEA by-law. The amendments aim to preserve the foundations of the existing Municipal Law Enforcement (MLE) Program for PPEAs while balancing the commercial interests of parking lot operators with the public interest in ensuring consumer protection.

Legal Services, Revenue Services, and the Toronto Police Service (TPS) Parking Enforcement Unit were consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

Commercial Parking Lots

1. City Council enact a new definition of "commercial parking lot" to include any location that demands compensation in relation to the use of a parking space, and a corresponding operator's licence requirement, in Toronto Municipal Code, Chapter 545, Licensing, Article I, General Provisions.
2. City Council enact a new article in Toronto Municipal Code, Chapter 545, Licensing, titled "Commercial parking lots", substantially in the form of the draft by-law as described in Attachment 1, subject to such technical and stylistic amendments as required by the City Solicitor and the Executive Director, Municipal Licensing and Standards.
3. City Council rescind, on the date the new article comes into force, the existing provisions of Toronto Municipal Code, Chapter 545, Licensing, Article XXII, Public Garages, relating to parking stations and parking lots, and authorize the City Solicitor and the Executive Director, Municipal Licensing and Standards to make such technical and stylistic amendments as required.
4. City Council approve amendments to Toronto Municipal Code, Chapter 441, Fees and Charges, by adding the following fees for 2015, subject to annual inflation:

Commercial Parking Lot Operator Licence:

- a. Application fee: \$392.73
 - b. Renewal fee: \$264.04
5. City Council authorize the Executive Director, Municipal Licensing and Standards, to exempt City agencies, boards, commissions and divisions (ABCDs) from the requirement to obtain a Commercial Parking Lot Operator licence.
 6. City Council authorize the Executive Director, Municipal Licensing and Standards, to apply any licence fees paid for 2015, by commercial parking lot operators for a Public Garage with a Parking Lot Endorsement licence, to the new Commercial Parking Lot Operator licence.

Private Parking Enforcement Agencies

7. City Council approve amendments to Toronto Municipal Code, Chapter 545, Licensing, Article I, General Provisions, to amend the definitions of:

- a. "parking enforcement services" to include the monitoring of property, the issuance of City of Toronto parking infraction notices, Toronto Police Service tow cards, and warning notices, in relation to vehicles parked on private property without the consent of the owner or occupant of such property; and
 - b. "private parking enforcement agency" to include a business that provides or performs parking enforcement services at a property for compensation.
8. City Council approve amendments to Toronto Municipal Code, Chapter 545, Licensing, Article XXXVII, Private Parking Enforcement Agencies, subject to such technical and stylistic amendments as required by the City Solicitor and the Executive Director, Municipal Licensing and Standards, to:
- a. Enact a new definition of "warning notice" to include any document that provides notification that a City of Toronto parking infraction notice or Toronto Police Service tow card may be issued to a vehicle;
 - b. Specify that the only documents a private parking enforcement agency may issue, in addition to City of Toronto parking infraction notices and Toronto Police Service tow cards, are warning notices;
 - c. Require private parking enforcement agencies to file written agreements for the provision of parking enforcement services and a listing of all properties for which they will provide parking enforcement services, with the Toronto Police Service Parking Enforcement Unit, rather than Municipal Licensing and Standards;
 - d. Prohibit private parking enforcement agencies from restraining or immobilizing any vehicle; and
 - e. Delete Sections 449B and C, as such sections are unnecessary.
9. City Council approve amendments to Toronto Municipal Code, Chapter 150, Municipal Law Enforcement Officers, subject to such technical and stylistic amendments as required by the City Solicitor and the Executive Director, Municipal Licensing and Standards, to:
- a. Specify that the only documents a private parking enforcement agency may issue, in addition to City of Toronto parking infraction notices and Toronto Police Service tow cards, are warning notices;
 - b. Prohibit all Municipal Law Enforcement Officers from restraining or immobilizing any vehicle;

- c. Grant Municipal Law Enforcement Officers the authority to tow un-plated vehicles upon receiving authorization from the Toronto Police Service Parking Enforcement Unit; and
 - d. Delete the requirement that the same Municipal Law Enforcement Officer that issued a City of Toronto parking infraction notice issue a Toronto Police Service tow card prior to a vehicle being removed.
10. City Council approve amendments to Toronto Municipal Code, Chapter 915, Parking on Private or Municipal Property, subject to such technical and stylistic amendments as required by the City Solicitor and the Executive Director, Municipal Licensing and Standards, to:
- a. Grant Municipal Law Enforcement Officers the authority to tow un-plated vehicles upon receiving authorization from the Toronto Police Service Parking Enforcement Unit; and
 - b. Delete the requirement that the same Municipal Law Enforcement Officer that issued a City of Toronto parking infraction notice issue a Toronto Police Service tow card prior to a vehicle being removed.

Commercial Parking Lots and Private Parking Enforcement Agencies

11. City Council direct that the proposed changes come into force on September 1, 2015.

Financial Impact

There are a total of 118 agencies operating under the Municipal Law Enforcement (MLE) Program, supervised by the TPS. However, since Council re-instated PPEA licensing on October 1, 2014, only 31 agencies have applied and obtained a licence from the City to operate as a PPEA.

Of the 118 agencies, 43 have been identified as 'in-house' agencies (i.e. individuals or organizations that conduct their own parking enforcement solely on their properties, and are not in the business of selling such services— including seven of which are City agencies, boards, commissions, or divisions of the City), which staff recommend should not fall under the definition of a PPEA nor the requirement to be licensed as such.

There are also another 44 agencies which ought to be licensed, and with the completion of the City's review of PPEAs and commercial parking lots, the expectation is that all outstanding agencies will apply to be licensed. The City will work closely with TPS to ensure that the licensing requirement is communicated to these PPEAs and, where necessary, take enforcement action.

Staff estimate receiving additional licensing revenues of \$11,617.76 for 2015, based on the issuance of 44 renewal PPEA licences at \$264.04 per licence.

With the creation of the new Commercial Parking Lot Operator licence, all persons operating a commercial parking lot and currently licensed as a Public Garage with a Parking Lot Endorsement will be required to surrender their Public Garage licence and will be issued a new Commercial Parking Lot licence. Any licence fees already paid will be applied to the new licence.

The financial impact of adopting the recommendation to create a new licence category and Municipal Code article related to commercial parking lots will have no effect on licensing revenues.

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 August 25, 26, 27 and 28, 2014, City Council reinstated the issuance of PPEA licences and the enforcement for non-payment of licence fees. Municipal Code, Chapter 441, Fees and Charges, was amended to replace the existing PPEA licence fees with new fees of \$383.00 for application and \$257.50 for renewal, subject to annual inflation, to come into force on October 1, 2014.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.LS30.2>

ISSUE BACKGROUND

Businesses providing parking enforcement services for private property owners within the City of Toronto are required to be licensed by the City as a Private Parking Enforcement Agency (PPEA) and at least one of its employees are required to be trained and certified as a Municipal Law Enforcement Officer (MLEO) by the TPS Parking Enforcement Unit in order to issue City parking infraction notices and authorize the removal, towing and impounding of vehicles illegally parked, left, stopped, or standing.

Parking lots and parking stations in the City of Toronto are also required to be licensed by the City as a Public Garage with a Parking Lot Endorsement, and on each premises, only a licensed PPEA may undertake parking enforcement activities.

Under the current by-law, PPEAs and public garages are prohibited from issuing their own demands for payment, whether in the form of a private ticket, notice or invoice. In 2004, Imperial Parking Canada Corporation (Impark), brought a court proceeding challenging the application of the City's PPEA regulations (By-Law 725-2004), which prohibited parking lot operators from carrying out parking enforcement activities except under the authority of a PPEA licence, and which prohibited PPEAs from issuing any document or demand for payment to vehicles parked without the consent of the property

owner, 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 Ontario Superior Court of Justice and the Ontario Court of Appeal ruled that Impark's use of signage in its lots expressly advises persons who may wish to park, that Impark offers space for public parking on the terms and conditions set out in the signs. This court decision found that the posted signage created a contractual relationship of prior consent for vehicles to park, such that the definition of "Parking Enforcement Services" and By-Law 725-2004 (which governs only vehicles parked without consent), did not apply to prohibit the issuance of private demands for payment.

Since these court rulings, numerous parking lot owners have started operating under the model of Impark, and until now, such operation has not been explicitly addressed by the City's by-laws.

Over the last several years, both the City and the TPS Parking Enforcement Unit have received numerous complaints that these parking lot operators are:

- not obtaining City licences to operate;
- posting multiple, conflicting or inadequate signage regarding parking terms and conditions in an attempt to intentionally mislead the public;
- failing to provide a mechanism to allow patrons to pay for parking; and
- "blanket tagging" vehicles and issuing private demands (i.e. documents other than a City parking infraction notice) with undue or exorbitant charges.

These practices have had a negative impact on the public's view of the parking enforcement industry and have undermined the integrity of certified MLEOs' legitimate enforcement activities. These practices have also led to concerns about consumer protection and how the City might ensure that parking lot operators provide information to patrons.

In light of complaints from the public and the courts' rulings respecting Impark, amendments to existing City by-laws are necessary to clarify the requirements for PPEAs and to set out further requirements for commercial parking lot operators.

COMMENTS

On March 26, 2015, ML&S hosted a public consultation on its review of the Municipal Code articles related to PPEAs and Public Garages as they pertain to the operation of commercial parking lots, and presented an overview of proposed by-law amendments. ML&S invited all licensed PPEAs and Public Garages with a Parking Lot Endorsement, the TPS Parking Enforcement Unit, and members of the general public. Approximately 25 people, including TPS, attended the consultation.

At the public consultation, PPEAs strongly expressed the need to ensure that any regulations being proposed for commercial parking lot operators should not compromise the existing MLE program, nor inadvertently disadvantage PPEAs who have been operating legitimately.

Issues of concern included:

- the number of unlicensed parking lots and their impact on law-abiding PPEAs;
- the inability of PPEAs to issue private demands for payment on behalf of commercial parking lot operators;
- providing commercial parking lot operators the dual ability to issue private invoices and have a PPEA or TPS ticket and remove vehicles when the operator withdraws his or her consent for a vehicle to park;
- capping the daily or cumulative amount that commercial parking lot operators may charge through private invoices;
- requiring too much information on commercial parking lot signage;
- inefficiencies in the current process for applying for a PPEA licence (duplication in documentation requirements for the City and TPS and the lack of an online capability to apply/renew business licences); and
- the need to consider reducing if not eliminating PPEA licence fees, as all revenues that result from the issuance of parking infraction notices are returned to the City.

Based on the feedback, a comprehensive set of regulations for commercial parking lots and PPEAs are being recommended. The regulations reflect the preservation of the existing MLE Program for PPEAs, while balancing the business interests of commercial parking lot licensees who want to ensure patrons pay for parking with the public interest in ensuring consumer protection against misleading business practices. Members of the public must be able to easily understand the terms and conditions of parking in a given lot, in order to make an informed decision as a consumer of parking services.

Regulations for Commercial Parking Lots

Parking lots and parking stations in the City of Toronto are currently required to be licensed as a Public Garage, and under this licence category, several types of business operations are also captured, including: motor vehicle repair shops, car washes, collision reporting centres, and gas stations.

Over the years, it has become apparent that issues related to commercial parking lots are separate and distinct from the other types of business operations captured under the

Public Garage licence category and the regulations respecting commercial parking lots have been buried in the Public Garages article. As such, staff recommend removing the existing provisions and incorporating them into a new licence category and Municipal Code article, expressly called "Commercial parking lots".

Through the creation of a new Commercial Parking Lot Operator licence, with requirements for the posting of signage, the issuance of private invoices, payment mechanisms, and for responding to public inquiries, staff can ensure that appropriate controls are in place to regulate unlicensed activity as well as inform and protect consumers where operators choose to make private demands for payment.

The licence fees for the proposed Commercial Parking Lot Operator licence will be consistent with the licence fees presently charged for Public Garages and PPEAs (for 2015: \$392.73 for application and \$264.04 for renewal), and fees already paid by commercial parking lot operators licensed under the Public Garage with a Parking Lot Endorsement classification will simply be applied to the new Commercial Parking Lot Operator licence.

The licence requirement will apply to the operator of any location that demands compensation in relation to the use of a parking space.

The proposed regulations for commercial parking lots recognize that some operators will want to make private demands for payment as per contractual terms and conditions, while others will want to enforce unauthorized parking by having City of Toronto parking infraction notices and/or TPS tow cards issued, by a licensed PPEA or by obtaining training and certification under TPS' MLE Program as an 'in-house' agency.

As such, **a property owner can choose** whether he or she will: (1) operate his or her own commercial parking lot and issue private demands for payment, (2) allow another individual or entity to operate the commercial parking lot and issue private demands for payment, (3) retain, or have an operator retain, the services of a PPEA to issue City of Toronto parking infraction notices and/or TPS tow cards, or (4) obtain, or have an employee obtain, certification under TPS' MLE Program to issue City of Toronto parking infraction notices and/or TPS tow cards solely on his or her property, as an 'in-house' agency.

For each commercial parking lot location, an operator will be required to take out a separate Commercial Parking Lot Operator licence.

Each location to be operated as a commercial parking lot, whether on a temporary or permanent basis, will also need to have the appropriate zoning clearance under existing zoning by-laws, in order to operate and be licensed as such.

The licence requirement will not apply to:

- 1) parking lots that offer free parking;
- 2) residents or tenants that rent out their parking spot on a weekly, monthly, or yearly basis for an individual's exclusive use;
- 3) parking lots governed under other City by-laws, such as those of the Toronto Parking Authority, which are regulated under Chapter 179 of the Municipal Code; or
- 4) agencies, boards, commissions and divisions (ABCDs) of the City.

The recommended by-law establishing a new article in Chapter 545, Licensing, titled "Commercial parking lots", as described in Attachment 1, has the following features:

1. Property owners must ensure commercial parking lot operators are licensed and commercial parking lot operators must ensure PPEAs are licensed

Where a property owner operates his or her own commercial parking lot, the owner will be required to obtain a commercial parking lot operator's licence.

Where a property owner allows an individual or other entity to operate a commercial parking lot on his or her property, the property owner will be required to ensure that the operator of the commercial parking lot holds a valid commercial parking lot operator's licence. Where the individual or other entity, as the operator, retains the services of a PPEA to undertake parking enforcement services, the operator will be required to ensure that the PPEA holds a valid PPEA licence.

Where a property owner retains the services of a PPEA to undertake parking enforcement services, the property owner is understood to be the operator, who will be required to obtain a commercial parking lot operator's licence and will be required to ensure that the PPEA holds a valid PPEA licence.

These provisions are aimed at ensuring that all participants in the commercial parking industry maintain appropriate licences and that appropriate parties are held responsible for ensuring that a commercial parking lot is used in accordance with licensing by-laws.

2. Operators must file proof of authorization from a property owner to operate a commercial parking lot

Where the owner of a property and the operator of a commercial parking lot on that property are not the same entity, the operator must provide to ML&S as part of the licensing process, proof of authorization from the owner, that he or she is permitted to operate the commercial parking lot on the property owner's behalf. This proof may be furnished in the form of a letter, or in the form of a copy of the agreement between the

two parties, and is necessary for ML&S to ensure that the operator has the permission of the property owner to operate the commercial parking lot.

3. Operators must post clear and uniform parking signage

Expanding on what is currently required of parking lots and parking stations under the Public Garages article, all operators will be required to post prominent signage at each parking lot entrance and at each pay station, with clear and legible conditions for parking.

All operators will be required include on their signage: their rate/charge for parking, information on the way(s) in which payment for parking may be made, as well as the commercial parking lot's business hours, registered business name, licence number, and a telephone number and e-mail address to which members of the public may direct parking-related inquiries.

As commercial parking lot operators now have the ability to choose from making private demands for payment, or, having parking enforcement services undertaken, **added regulations are necessary to prohibit operator's from posting multiple, conflicting or inadequate signage, and to ensure that members of the public easily understand, through signage, an operator's terms and conditions for parking, as well as any consequence they may be subject to for contravening such conditions.**

Operators who wish to issue a private invoice

Where an operator wishes to issue a private demand for payment for the unpaid use of his or her lot, their signage must include a clear statement advising patrons that they may receive a private demand for payment/invoice if they park without paying the required rate/charge, and the amount that may be demanded, must be posted. In such situations, it is understood that the operator consents to vehicles parking, even where payment has not been made in advance. Parking is being carried out according to a contractual agreement, and any amounts collected by the commercial parking lot operator through private invoice, are sums owing to it under contract.

All operators will be required to file a copy of their signage with ML&S as part of the licensing process, and operators cannot post any signage until it has been filed with ML&S. This requirement is necessary ensure that operators are not changing their signs from what a consumer understands are the operator's parking terms and conditions, by virtue of another set of signs.

Operators who wish to have vehicles ticketed/towed

Where an operator intends to retain the services of a PPEA, receives MLEO training and certification as an 'in-house agency', or requests the TPS to issue a City of Toronto parking infraction and/or a Toronto Police Service tow card to vehicles parked without consent, signage, as required by the *City of Toronto Act, 2006*, must be posted upon the premises indicating this prohibition. In such situations, it is understood that the operator

does not consent to vehicles parking where payment has not been made in advance, and any vehicle that has parked without paying, is considered to be trespassing. The form of this signage must be approved by the TPS Parking Enforcement Unit as part of the MLE certification process for parking enforcement.

4. Requirements for private demands for payment

Where a vehicle parks in a commercial parking lot without paying for parking, and signage indicates that failure to pay the posted rate may result in a private demand for payment, an operator may issue a written demand in the form of a private invoice.

The private invoice must:

- clearly outline the alleged contravention of parking terms and conditions;
- not resemble, in colour or design, a City of Toronto parking infraction notice;
- not include the City of Toronto logo;
- state that the invoice 'is not a City of Toronto parking infraction notice and is a private invoice';
- include detailed information on how payment may be made and how an invoice may be disputed; and
- provide the operator's registered business name, licence number and contact information.

To ensure that the City has some oversight over the documents operators are issuing, all operators will be required to file a copy of their invoices with ML&S as part of the licensing process. Operators cannot issue any invoice until it has been filed with ML&S.

The contents of the invoice must also be consistent with the terms and conditions of the signage posted at the premises.

Together, these provisions are aimed at ensuring that patrons who receive a private invoice, are clear that they are receiving an invoice for failing to pay the required rate/charge for parking, and are not misled by the form of document they receive. These provisions directly address the issue of look-a-like tickets/tags, with clear direction that prohibits the design of invoices that resemble official City of Toronto parking infraction notices.

Operators that choose to demand payment by issuing private invoices are prohibited from issuing, or attempting to issue, City of Toronto parking infraction notices and/or TPS tow cards. In accordance with current regulations, only trained and certified MLEOs and the TPS, may issue City parking infraction notices and/or TPS tow cards.

5. Ticketing/towing by a licensed PPEA, MLEOs, or the TPS

Where a vehicle parks in a commercial parking lot without paying for parking, and signage indicates that a ticket may be issued and/or towing may occur, a licensed PPEA, may conduct parking enforcement services on behalf of the commercial parking lot

operator by issuing warning notices, City of Toronto parking infraction notices and/or TPS tow cards, in accordance with the existing PPEA by-law. Alternatively, the owner of a commercial parking lot, or his or her employee, may issue City of Toronto parking infraction notices and/or TPS tow cards on the property, provided that MLEO training and certification as an 'in-house' agency has been obtained.

However, PPEAs and MLEOs may not make any demands for payment or issue any private invoices on behalf of a commercial parking lot operator, consistent with existing regulations.

6. Operators must maintain payment mechanisms and provide proof of payment

All operators must maintain a mechanism that provides patrons an opportunity to pay for parking. This means ensuring that either an attendant is on duty during the parking lot's business hours and/or that all devices and systems used to accept payment for parking (e.g. parking meters/machines, mobile applications, etc.) are maintained in good working order. This requirement is necessary to address the reported issues with some operators who require up-front payment for parking, but intentionally fail to provide a mechanism for payment, so that they may issue a demand for payment in a higher amount.

Further, the mechanisms used to accept payment for parking must also be able to immediately furnish a parking receipt/proof of payment, and this is an existing requirement of parking lots and parking stations under the current Public Garages article.

7. Operators must respond to public inquiries

All operators must maintain a telephone number and e-mail address, consistent with the contact information posted upon their signage, where members of the public may direct parking-related inquiries. During the commercial parking lot's business hours, the telephone line must be monitored for the purpose of responding to immediate issues (including non-functioning barrier gates, which prevent vehicles from exiting the premises, non-functioning parking metres or machines, which prevent patrons from making payment or from obtaining a receipt/proof of payment, etc.). Outside of business operating hours, the telephone line must be able to accept voice messages.

8. Conditions under which there is no consent to park

The by-law will also explicitly specify under what conditions operators are deemed not to consent to any vehicle being parked, left, stopped or standing— these conditions being: in a designated accessible parking space where no accessible parking permit is displayed, in an emergency access or fire route, where more than one parking space is being occupied, in a location that prevents other vehicles from entering/exiting the licensed premises, and where a vehicle is un-plated. These conditions need not be listed on the operator's signage in order to be enforced.

An operator may also prohibit parking at certain locations of a lot, for example, in reserved parking spaces or in turn-around areas, provided that clear signage is posted to indicate such prohibition.

Any vehicle that is found to be parked in contravention of these requirements is automatically subject to ticketing/towing by the TPS. No demand for payment or private invoice may be issued.

9. Operators may not restrain/immobilize vehicles

Over the years, there have been issues raised with respect to operators attempting to place 'boots' and/or attach devices to vehicles parked on their premises which restrain, immobilize, and prevent vehicles from being driven, as a means of enforcement. Not only are there potential safety issues with not being able to move vehicles in emergency situations, but also concerns that vehicles may be damaged by the attachment of such devices as well as questions around the fairness of this practice. According to the TPS, the use of immobilization devices by any operator may be considered a violation of Section 430 under the Criminal Code, and charges against an operator may be laid. As such, the TPS agrees that the practice should be explicitly prohibited in the City's by-laws.

Consideration into capping amounts that may be demanded by private invoice

In an effort to address the issue of operators issuing invoices with undue or exorbitant charges, consideration was given to capping the private invoice amounts that may be demanded by commercial parking lot operators. Staff contemplated a maximum daily invoice amount as well as a maximum cumulative invoice amount, and contemplated various alternatives to how such maximums could be established. Ultimately however, staff decided against imposing any caps. The City is not in the business of valuing private property and prescribing what an operator may charge. Staff feel that it is sufficient to require operators to post their rates/charges for parking, as well the amount of any private demand for payment that may be required. As long as parking terms and conditions are expressly indicated, any person should be able to understand the requirements of parking in a given premises and be able to make an informed decision as to whether they accept the terms and conditions to park.

Recommended Amendments for PPEAs

According to the TPS, the existing MLE Program has been effective. PPEAs in the program are operating in compliance with the City's by-laws and their activities are closely monitored and supervised by the TPS Parking Enforcement Unit. As such, staff recommend only minor amendments to the by-laws governing PPEAs— with the purpose of such amendments to clarify and expand the existing authorities of PPEAs.

Amendments to Chapter 545, Licensing, Article XXXVII, Private Parking Enforcement Agencies

1. Amending the definition of a Private Parking Enforcement Agency to include only those that sell their services for compensation

Currently, the by-law defines a private parking enforcement agency as "[a] business which provides or performs parking enforcement services."

Recognizing that there are some businesses that conduct parking enforcement solely on their properties and are not in the business of selling such services, staff propose amending the definition of a PPEA to exclude them from the licensing requirement, and expressly capture only businesses that sell their parking enforcement services and receive compensation for the provision of their services.

Such businesses, which have come to be known as 'in-house' agencies, represent properties that issue City parking infraction notices and/or TPS tow cards for the purpose of ensuring that their own parking facilities are being used only by their patrons, members, employees, or tenants. They are not in the business of providing or performing parking enforcement services for other properties. They are trained, certified, and supervised under TPS' MLE Program to undertake parking enforcement activities, and will continue to do so, although they will be exempted from requiring a PPEA licence.

2. Changing the filing of agreements and listing of properties

Currently, the by-law requires every PPEA to enter into a written agreement with the owner of each property for which they will be providing parking enforcement services and to file such agreements with ML&S within 10 days of the agreements being executed. Every PPEA is also required to file a list of all properties for which they will provide parking enforcement services with the TPS Parking Enforcement Unit.

In practice, both the agreements and the list of properties are being collected by ML&S (as part of the City's licensing process and for enforcement purposes) and by the TPS Parking Enforcement Unit (as part of the MLEO certification process). PPEAs have expressed concern in having to file duplicate information with the City and TPS, and so a process to share such information is now jointly being developed. Staff recommend that the current by-law be amended to require PPEAs to file their agreements and their list of properties only with the TPS Parking Enforcement Unit. Procedurally, TPS will then forward the required information and documents to ML&S to facilitate the licensing process on behalf of PPEAs.

Staff also propose shortening the amount of time that PPEAs have to file such agreements from 10 days following the execution of an agreement, to five days.

3. Deleting obsolete sections of the by-law

Staff propose that certain provisions in the PPEA article be deleted as their inclusion in the by-law is unnecessary.

§ 545-449 B. states that "[n]o agency shall be a party to an agreement unless the owner or occupant of the property to which the agreement pertains is a party to such agreement." As it is understood that any agreement for the provision of parking enforcement services is to be made between a PPEA and an owner or occupant of property, the inclusion of the provision serves no purpose.

Under § 545-449 C., "[a]ny person licensed under this chapter who enters into or purports to enter into any agreement for the provision of services other than in accordance with this section may, in addition to any other penalty to which such person may be liable under this chapter, be required to attend before the Toronto Licensing Tribunal for a hearing to determine whether or not his or her licence should be suspended, revoked or have conditions imposed on it." In cases where ML&S has concerns with the operation of any licensee during the tenure of their licence, ML&S has the authority to bring matters to the Toronto Licensing Tribunal, and this authority is already explicitly defined under § 545-6. B. Toronto Licensing Tribunal hearings. As such, this provision also serves no purpose.

Amendments to Chapter 545, Licensing, Article XXXVII, Private Parking Enforcement Agencies and Chapter 150, Municipal Law Enforcement Officers

1. Clarifying the types of documents PPEAs and MLEOs may issue

Currently, the by-law prohibits any person employed, engaged or otherwise acting under the authority of a PPEA from issuing any document, tag, ticket or notice, or request or demand for payment in relation to vehicles parked on private property, other than a parking infraction notice under Part II of the *Provincial Offences Act*, a Toronto Police Service tow card or other document as approved by the Chief of Police.

While it is widely understood that PPEAs trained and certified as MLEOs have the authority to issue City of Toronto parking infraction notices and TPS tow cards, there is some ambiguity with respect to the issuance of 'other documents'.

Staff propose amending the by-laws governing PPEAs and MLEOs, along with the definition of parking enforcement services, to make it clear that the only type of 'other document' permitted to be issued, and in practice is being issued by some PPEAs, are warning notices approved by the TPS Parking Enforcement Unit, that advise of the potential that a parking infraction notice may be issued and/or that towing may occur.

2. Prohibiting PPEAs and MLEOs from restraining/immobilizing vehicles

Currently, the by-laws governing PPEAs and MLEOs lack any regulation regarding the restraint or immobilization of vehicles. However, in recognition of the issues around some operators attempting to place 'boots' and/or attach devices to vehicles to prevent such vehicles from being driven, staff propose that a provision be added to prohibit this activity in the same manner being proposed for commercial parking lot operators.

Amendments to Chapter 150, Municipal Law Enforcement Officers and Chapter 915, Parking on Private or Municipal Property

1. Allowing MLEOs to tow un-plated vehicles

Currently, only TPS officers have the authority to tow un-plated vehicles, which are often abandoned and derelict. Un-plated vehicles create significant problems for private property owners and requests for their removal strain TPS resources.

TPS and City staff agree in recommending that relevant sections of Chapter 150, Municipal Law Enforcement Officers, and Chapter 915, Parking on Private or Municipal Property, be amended to expand this authority. Going forward, MLEOs will be able to tow un-plated vehicles, provided that they contact the TPS Parking Enforcement Unit to ensure the necessary safety and criminal checks are conducted and TPS approval is received, prior to removing any vehicle.

2. Increasing flexibility in issuing parking infraction notices and tow cards

Currently, Chapter 150, Municipal Law Enforcement Officers, and Chapter 915, Parking on Private or Municipal Property, requires that the MLEO who issues a parking infraction notice must also issue the TPS tow card at the time of vehicle removal.

The TPS Enforcement Unit and current PPEA operators expressed concern with this requirement, explaining that there is no need for the same MLEO to issue the parking infraction notice and the tow card. If a vehicle needs to be removed but the MLEO who issued the parking infraction notice is no longer available (for example, due to the completion of his or her work shift), another MLEO must cancel the original parking infraction notice and re-issue a new parking infraction notice and tow card in order to remove the vehicle.

Recognizing that this restriction complicates the practice of conducting parking enforcement activities, staff propose amending relevant sections of Chapter 150, Municipal Law Enforcement Officers, and Chapter 915, Parking on Private or Municipal Property, to remove this requirement.

The regulations proposed in this report aim to accomplish a balance between the private commercial interests of parking lot operators and PPEAs, against the City's interest in safeguarding the public against unlawful business practices. If City Council adopts the recommendations in this report, appropriate measures will be taken to communicate the changes and information regarding licensing requirements, to all PPEAs and parking lots operators, as well as members of the public. The changes are proposed to take effect on September 1, 2015.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1: Amendments to Chapter 545, Licensing, re: Commercial Parking Lots