



CITY OF  
ST. CATHARINES

## Corporate Report

---

**Report from** Corporate Support Services, Legal Services

**Date of Report:** January 28, 2013

**Date of Meeting:** February 11, 2013

**Report Number:** CSS-041-2013

**File:** 77.34.99

**Subject:** Parking Enforcement in Private Parking Lots in the Downtown Core

### Recommendation

That the report from Corporate Support Services, Legal Services be received for information purposes, FORTHWITH

### Summary

While the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits municipalities to regulate parking in private parking lots and on other private property, and to arrange for the removal of vehicles parked on private lands without the owner's consent, the City does not actively patrol or enforce parking regulations on private property at the present time, other than Fire Routes and Accessible Parking. The costs associated with patrolling and enforcement of parking restrictions on private property, in addition to the City's current mandate of parking enforcement, would place a burden on the City's parking budget.

### Background

On January 16, 2012, Councillor Elliott requested that Staff prepare a report on vehicles towed from privately-owned parking lots and the possibility of the City assuming the responsibility of parking enforcement in these lots in the downtown core. (Council - Item 16). This request came in response to concerns raised by visitors to the City's downtown core regarding towing rates and enforcement in privately-owned parking lots.

### Report

#### **Authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Act")**

Section 100 of the Act allows a municipality to regulate or prohibit the parking of vehicles on land used as a parking lot that is not owned or occupied by the municipality, if the vehicle is on the land without the owner's consent, provided that signage is erected at each entrance to the land indicating the prohibition. Section 100.1 of the Act gives the municipality similar powers on private land not used as a parking lot. Section 101 of the Act allows a municipality that has passed a by-law regulating or prohibiting parking on land to provide for the removal and impounding or restraining and

immobilizing of the vehicle parked or left in contravention of the by-law at the vehicle owner's expense.

### **Parking By-laws**

At the present time, the City has a number of by-laws that address the issue of parking within the City. By-law No. 89-2000, as amended, being "A By-law regulating traffic and parking on City Roads", only applies to parking on public highways. By-law No. 89-304, as amended, being "A By-law to designate private roadways as fire routes along which no parking of vehicles is permitted", prohibits parking along fire routes on private roadways. By-law No. 89-305, as amended, being "A By-law to provide for regulating, supervising and governing the parking of vehicles in various municipal parking facilities", only applies to those municipal lots listed in Schedule "A" of that By-law. By-law No. 89-357, as amended, being "A By-law to prohibit the parking or leaving of motor vehicles on private property without the consent of the owner or occupant of the property", prohibits the parking of a vehicle, without the consent of the owner, on lands described in Schedule "A" of that By-law. By-law No. 89-357 permits a Police Officer or other officer appointed for enforcing the provisions of the By-law to cause such vehicle to be moved or taken to and placed or stored in a suitable place, and all costs and charges for removing, caring for and storage thereof are a lien upon the vehicle.

The addition of locations to Schedule "A" of By-law No. 89-357 allowed for the issuance of parking tickets pursuant to Part II of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended (the "POA"). In order to allow for prompt and effective enforcement of the By-law in these private parking lots, requests were made by the owners of the specified properties for certain of their employees to be appointed as municipal law enforcement officers. This enabled these employees to issue POA tickets for contraventions of the By-law within their parking lots. City parking enforcement officers have never actively enforced the provisions of By-law No. 89-357 on behalf of the private property owners, whose lands were listed in Schedule "A".

Over the years, Council has authorized the addition or deletion of various locations to/from Schedule "A" when requested to do so by the property owner. Currently, the list of properties set out on Schedule "A" to By-law No. 89-357 includes Brock University, Roman Catholic Episcopal, Niagara College, St. Catharines General Hospital, Hotel Dieu Hospital, and Niagara Health System. While By-law No. 89-357 has not been repealed, and while the above-noted locations were never deleted from Schedule "A", active enforcement of By-law No. 89-357 has not occurred for some time.

### **The City's Current Parking Enforcement Regime**

Currently, the City contracts with the Canadian Corps of Commissionaires for its parking enforcement officers. These officers enforce the City's parking by-laws and issue POA tickets in relation to parking violations. The City currently contracts eight (8) full-time officers, at 40 hours/week and two (2) part time officers at 32 hours/week. Currently, parking enforcement does not take place 24/7. As part of their duties, officers are required to prepare for and attend at Provincial Offences Court to give evidence in relation to disputed tickets.

Staff handles the administration of parking enforcement by processing payments and addressing public inquiries. Staff also handles all parking prosecutions and appeals, including the preparation and issuance of all notices relating to convictions and trials.

In addition to the ticketing of vehicles parked in contravention of parking by-laws, the City may arrange for the towing of a vehicle from a public highway or municipal lot in limited circumstances and does so only as a last resort. The City does not receive any monies when a vehicle is towed.

The City accesses towing companies on a rotation basis. The City currently utilizes two (2) towing companies and each has a secured compound for storage of towed vehicles. The towing companies are obligated to notify the Niagara Regional Police Service ("NRPS") when they tow a vehicle, and the towing rates charged are the same as those set by the NRPS for their tow rotation. Staff has been advised that, while the NRPS does not regulate rates charged by towing companies for tows from private lots, it is Staff's understanding that the rates charged in these circumstances are normally the same as tows from a Municipal lot or a tow requested by the NRPS.

### **City of Hamilton**

The City of Hamilton's Parking By-law 01-220 regulates the parking of motor vehicles on both private and municipal property. Municipal Law Enforcement Officers with the City of Hamilton enforce the By-law on private property in two instances. First, where the City receives a complaint respecting the unauthorized parking of a vehicle on private property from an "authorized complainant" who has been so designated by the property owner, enforcement officers will attend at the parking lot, and, provided the appropriate signage is located on site, will issue a Part II POA ticket. The authorized complainant must remain with the Enforcement Officer for the duration of the attendance and will be required to give evidence in court as to the reasons that enforcement was requested. City Enforcement Officers will also enforce the provisions of the By-law on private property where a Blanket Enforcement Authorization ("BEA") has been given by a property owner. This BEA contains the specific instances in which the City is authorized to issue a ticket in relation to that property. Enforcement under the BEA will only occur during those hours when a representative of the property is not on-site (this occurs outside of regular business hours or 24/7 in parking lots where there is never a representative on site). The City of Hamilton does not charge private property owners for this enforcement service, and the only cost to the private property owner is the cost for having the parking signs made, installed and maintained. The revenue for tickets issued in these private lots remains with the City.

The City does not provide enforcement services on private properties where the lot owner uses other forms of parking enforcement (including ticket issuing and towing). Currently, there is only one (1) parking lot company in the City of Hamilton that conducts its own enforcement.

### **Assumption of Parking Enforcement in Lots Located in the Downtown Core**

The passage of a by-law to regulate the parking of vehicles on private property in accordance with sections 100 and 100.1 of the Act would give the City power to enforce parking restrictions on private property. Given the age and limited scope of the City's

existing By-law No. 89-357, as amended, its repeal, as well as the repeal of the various By-laws which have appointed individuals as municipal by-law enforcement officers for the purpose of enforcing By-law No. 89-357, as amended would be necessary. In order to establish the parameters of such enforcement, the City would need to engage in discussions with the owners of these private parking lots and enter into agreements with them to define the parameters of the relationship.

In accordance with the Public Notice By-law, prior to the passage of a by-law to regulate parking on private property, notice would be required and persons wishing to be heard would be provided an opportunity to comment at a Public Meeting.

### **Financial Implications**

There are no financial implications as a result of this report; however, adding a patrol of the private lots would necessitate contracting for additional parking enforcement officers, particularly if such patrol was required on a 24/7 basis. Additional Staff time to process payments, answer public inquiries and handle the prosecutions and appeals relating to tickets issued in private lots would be anticipated. Staff's assessment is that patrolling and enforcing violations in these private lots would be a burden on the City's parking budget, and that the costs associated with additional enforcement would not be offset by the revenue generated by tickets issued in these lots.

### **Conclusion**

The *Municipal Act, 2001* provides authority for the City to regulate and enforce parking prohibitions on private property; however, given that the City does not currently contract for parking enforcement services on a 24/7 basis, additional costs would be incurred to provide for such patrols.

### **Submitted by:**

Stacey E. Wells, Assistant City Solicitor

### **Prepared by:**

Stacey E. Wells, Assistant City Solicitor

### **Approved by:**

Christopher C. Cooper, Director of Legal Services (Acting)