



# REPORT

## Council

Meeting Date: July 9, 2024

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**FROM:** Municipal Enforcement Services Department

**DATE:** July 2, 2024

**SUBJECT:** Towing Vehicles from Private Property

**LOCATION:** Town-wide

**WARD:** Town-wide

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### RECOMMENDATION:

That Council determine if it wishes to pursue Option #1, #2 or #3 if any, presented in the report from Municipal Enforcement Services dated July 2, 2024 to address the remedy of towing from private parking lots.

### KEY FACTS:

The following are key points for consideration with respect to this report:

- As of January 1, 2024, oversight of the towing and vehicle storage sectors was transferred to the Province of Ontario and municipal authority to regulate these sectors ended
- The Towing and Storage Safety and Enforcement Act (TSSEA) regulates the towing and vehicle storage sectors
- Tow Truck By-law 2019-060 and references to motor vehicle storage yards in Licensing By-law 2015-075 were repealed as of January 1, 2024
- By-law 1981-65 regulates parking on private parking lots without the consent of the owner or occupant of the parking lot
- Owners of private parking lots may also tow unauthorized vehicles under common law
- Use of the term “private parking lots” in this report includes parking spaces at residential condominiums, apartments, townhouse complexes, etc., as well as commercial parking lots
- Private parking lot owners may register with the Town to request that the Town enforce parking at their lot under By-law 1981-65 or they may apply to have persons delegated under Municipal Powers and Duties By-law 2023-021 to enforce parking under By-law 1981-65. Persons with this authority are known as municipal law enforcement officers (MLEOs)

- MLEOs have been appointed by the Town to enforce parking at 240 private parking lots
- As requested, options are presented for Council's consideration to address towing from private parking lots without the vehicle owner/driver's consent
- A confidential report from Legal advising on the current state of the law as to towing from private property is included on the agenda for this meeting

**BACKGROUND:**

Oversight, including certification, for the towing and vehicle storage yard sectors was transferred from municipalities to the Province on January 1, 2024 through TSSEA. The Municipal Act, 2001 was also amended at this time to remove the authority for municipalities to regulate towing through a licensing regime.

Prior to its repeal on January 1, 2024, the Town's Tow Truck By-law regulated the towing of vehicles from private parking lots without the owner/driver's consent ("without consent"). The By-law required that signage be posted at parking lots where towing occurred, set the rates that tow companies could charge, required that vehicles be towed to a storage yard within the boundaries of Oakville and that tow companies advise the Halton Regional Police Service (HRPS) prior to towing a vehicle. The Tow Truck By-Law was not crafted in a manner to prevent private parking lot owners from using common law to remove a vehicle from a private parking lot without consent.

The following currently applies to private parking lots:

- The owner of a private parking lot may tow a vehicle that is illegally parked without consent (ie. trespassing) under common law as long as proper notice is provided by signage or otherwise; OR
- The owner of a private parking lot may have a vehicle towed that is illegally parked contrary to By-law 1981-65, as amended which was passed pursuant to Sections 100 and 101 of the Municipal Act, 2001 and provides that a municipality may regulate or prohibit the parking or leaving of motor vehicles on a parking lot without the consent of the owner of the lot or regulate/prohibit traffic on the lot if a sign is erected at each entrance to the lot clearly indicating the regulation or prohibition.

Town parking enforcement at private parking lots is currently conducted in the following ways:

- Private parking lot owners may register with the Town to request that the Town's Mobile Compliance Officers (MCOs) enforce parking at their lot under By-law 1981-65; or

- Private parking lot owners may apply to have persons delegated under Municipal Powers and Duties By-law 2023-021 to enforce parking under By-law 1981-65. Persons with this authority are known as municipal law enforcement officers (MLEOs).

The Town has not been involved in the use of the towing remedy for illegal parking on private parking lots for the last 10 years, except on very rare occasions, in order to limit the impact to the tax rate.

### **COMMENT/OPTIONS:**

This report includes three options for Council's consideration as possible methods of addressing towing from private parking lots without consent.

#### **Option #1 – Contact Province to Consider Amendments to TSSEA**

Currently, subsection 20(1) of TSSEA states that vehicle owner consent is required before towing services are provided. Subsection 32(1) of Ontario Regulation 167/23 sets out the following persons who may consent to towing and vehicle storage services:

- The vehicle owner or a representative of the vehicle owner who is authorized by the owner to exercise control of the motor vehicle on the owner's behalf.
- The driver of the motor vehicle or other person exercising control of the motor vehicle.
- The operator of the vehicle.
- A representative of the vehicle owner's automobile insurance company.

Subsection 20(2) of TSSEA provides that consent is not required if the vehicle is impounded or stored at the direction of a police officer or other person with authority to direct impoundment or storage or in any other circumstances that may be prescribed.

Neither TSSEA nor Ontario Regulation 167/23 defines the "other person with authority to direct impoundment or storage". It is unclear whether this includes municipal law enforcement officers and the owners of private parking lots. Having this term clarified in the legislation would assist in formulating a direction for managing towing from private parking lots without consent.

*Outcomes of Option 1:*

If the Province did define “other person with authority to direct impoundment or storage” to include private property owners:

Town, HRPS and MLEO: Would continue to utilize By-law 1981-65 for parking enforcement and towing from municipal property and from private parking lots in exceptional circumstances.

Private parking lot owner: Would retain their ability to authorize the removal of vehicles from private parking lots. Requests may also be submitted to the Town in exceptional circumstances.

If the Province states that “other persons with authority” does not include private property owners, then:

Town, HRPS and MLEO: Would utilize By-law 1981-65 for parking enforcement and towing from municipal property and from private parking lots in all circumstances. A service level and procedure would need to be developed and staff resources allocated to administer and support the established service level.

Private parking lot owner: Would be required to have the removal of a vehicle from a private parking lot directed by an MCO, MLEO or HRPS. An amendment to By-law 1981-65 may be provided for immediate towing from fire routes.

It is noted that this option would require the ability to set regulations including setting response time, service levels, communications, and resource requirements. MES would investigate opportunities available to set regulations to establish how and when towing will be authorized, which may include minimum time requirements between the issuance of a penalty notice and a tow. Without the ability to set the procedural requirement it would result in the responsibility falling directly to MCOs and HRPS with a considerable impact on the tax rate.

*Alternate Resolution:*

Should Council prefer Option #1, the following resolution may be substituted for the recommendation contained in this report:

That the Mayor, on behalf of Council, write to the Minister of Transportation to urge the Province to consider amendments to Towing and Storage Safety and Enforcement Act sections 20(2) and 23(2) and Ontario Regulation 167/23 to define the “other person with authority to direct impoundment or storage” who may direct

the impoundment or storage of a vehicle without the consent of the vehicle owner, owner's representative, driver, operator or the owner's insurance company.

**Option #2 – Retain Owner's Ability to Tow and Amend By-law 1981-65 to Reflect Current Practices**

This option generally reflects the status quo in which, MCOs and MLEOs would issue penalty notices and not initiate towing. The private parking lot owner may rely on common law for their ability to tow and would interpret TSSEA to include themselves as a person who could direct a tow without consent. The owner would have to obtain their own legal advice regarding their authority to tow.

HRPS would not take enforcement action against the property owner or tow truck company as long as the tow was reported to HRPS. In this case, any dispute between the owner of the vehicle and the private property owner and/or their agent is purely a civil matter. Payment for the tow would end up being a civil matter between the vehicle owner and the owner of the private parking lot. The private parking lot owner should pay for the tow, but the vehicle owner would likely end up paying for the tow in order to have their vehicle released from the storage yard. The vehicle owner would then have to recover their costs through an action at Small Claims Court, if they wish.

Should this option be adopted by Council an amendment to, Municipal Right-of-Way By-law 2009-072 would be required to permit the towing of vehicles from municipal parking lots at community centres, recreation centres and other Town facilities. As well, staff would prepare a procedure to set out the process to be followed by MCOs and HRPS to initiate tows on Town property under the Municipal Right-of-Way By-law.

*Outcomes of Option #2*

Town, HRPS and MLEO: Would still provide parking enforcement and continue the practice of not towing from private property.

Private parking lot owner: Would still be able to confirm violations for the issuance of penalty notices under the By-law. Private parking lot owners could supplement parking enforcement by using common law to tow and by towing without consent if they satisfy themselves that they qualify under TSSEA.

*Alternate Resolution:*

Should Council prefer Option #2, the following resolution may be substituted for the recommendation contained in this report:

1. That Option #2 included in the report from Municipal Enforcement Services dated July 2, 2024 regarding towing from private parking lots be adopted.
2. That Council direct Municipal Enforcement Services to prepare a by-law to amend By-law 1981-65 to delete references to towing vehicles that are parked in contravention of the By-law on private parking lots.
3. That Municipal Right-of-Way By-law 2009-072 be amended to provide for the towing of vehicles parked in municipal parking lots at Town facilities.
4. That Municipal Enforcement Services staff report back with a final version of the amending by-laws by Q1 of 2025.

### **Option #3 – Override the Private Parking Lot Owner’s Ability to Tow**

This option would override the ability of private parking lot owners to tow and would require all vehicle removals to be approved by the Town or HRPS.

This option would require MES to develop a by-law and procedure to support the administration and enforcement of a towing program. This could include, setting response times, service levels, communications, and resource requirements. MES will investigate opportunities available to set regulations under a by-law to establish how and when towing will be authorized, which may include minimum time requirements between the issuance of a penalty notice and a tow.

In order for Option #3 to be viable, it requires support from HRPS to address the impoundment of vehicles towed without authorization. MES and HRPS would need to, in partnership, determine these procedures in or for this type of approach particularly related to how the impoundment of vehicles towed contrary to a by-law would be addressed.

#### *Outcomes of Option #3*

HRPS and Town: Would continue to discuss how the overriding of a private parking lot owner’s ability to tow would be enforced and how the impoundment of vehicles towed contrary to a by-law would be addressed. These discussions will inform the development of a by-law, resulting in an effective and enforceable program.

Town: The Town would prepare a by-law and procedure, in consultation with HRPS and Legal to override the private parking lot owner’s ability to tow unauthorized vehicles. Such a by-law would require additional administration and enforcement resources to meet service levels established as part of this

towing program. These details will be presented to Council in a future report should Option #3 be adopted.

Considerations for Option #3 that impact MES resources:

Regulating towing on private parking lots will require:

1. Determining the best way to regulate towing on private parking lots which may include, but not be limited to:
  - a. direction of a tow by an MCO or HRPS, but not by an MLEO;
  - b. direction of a tow by an MCO, HRPS or an MLEO; or
  - c. using licensing to regulate the towing process performed by an MLEO.
2. Discussions with HRPS on the enforcement of the by-law and how impoundment of unauthorized vehicles will be addressed.

Private parking lot owner: Would no longer have the ability to tow and would be required to follow the Town's by-law.

Vehicle Owners: Towing of an unauthorized vehicle would be in accordance with the by-law, and consequences for vehicle owners would depend on the by-law's provisions. These details will be presented to Council in a future report should Option #3 be adopted.

*Alternate Resolution:*

Should Council prefer Option #3, the following resolution may be substituted for the recommendation contained in this report:

1. That Option #3 included in the report from Municipal Enforcement Services dated July 2, 2024 regarding towing from private parking lots be adopted.
2. That after further discussions with the Halton Regional Police Service, Municipal Enforcement Services prepare a by-law to override the private parking lot owners' ability to tow unauthorized vehicles parked on their lot.
3. That Municipal Enforcement Services report back to Council with the results of the discussions with the Halton Regional Police Service, the by-law pursuant to Recommendation 2, and a report to address how towing will occur in the future, as well as Municipal Enforcement Services' resourcing requirements to administer and enforce the by-law.

**CONSIDERATIONS:**

**(A) PUBLIC**

Notice of by-law amendments or new by-laws will be provided as required.

**(B) FINANCIAL**

There is no significant financial impact as a result of this report.

**(C) IMPACT ON OTHER DEPARTMENTS & USERS**

Municipal Enforcement Services, Legal and the Halton Regional Police Service have been involved in the review process for this report.

**(D) COUNCIL STRATEGIC PRIORITIES**

This report addresses Council's strategic priority of accountable government.

**(E) CLIMATE CHANGE/ACTION**

N/A

**APPENDICES:**

N/A

Prepared by:

Margaret Boswell, Manager – Strategy, Licensing and Business Services

Recommended by:

Selena Campbell, Director – Municipal Enforcement

Submitted by:

Ralph Kaminski, Acting Commissioner, Community Development Commission