

REPORT

Council

Meeting Date: December 16, 2024

FROM: Municipal Enforcement Services Department

DATE: December 3, 2024

SUBJECT: Towing Without the Vehicle Owner's Consent, By-law 2024-187

LOCATION: Town-wide

WARD: Town-wide

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RECOMMENDATION:

1. That By-law 2024-187, a by-law to regulate the towing of any vehicle without the vehicle owner's consent from land in the Town of Oakville, as detailed in Appendix A of the Municipal Enforcement Services report dated December 3, 2024, be passed.
2. That any Town by-laws requiring amendments to enable and implement By-law 2024-187 be presented to Council at a future Council meeting for passage, without a separate report.

KEY FACTS:

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

- On July 9, 2024, Council instructed staff to draft a by-law addressing predatory and fraudulent towing of vehicles from land in Oakville without the vehicle owner's consent.
- By-law 2024-187, known as the Towing Without the Vehicle Owner's Consent By-law and attached as Appendix A, eliminates any common law right to tow or impound a vehicle without the owner's consent.
- This by-law applies to all land in Oakville, including privately owned land and land owned or occupied by the Town, such as parking lots.
- The by-law mandates that landowners must adhere to either the by-law or the Trespass to Property Act, R.S.O. 1990, c. T.21, when towing or impounding vehicles without the owner's consent.

- Private parking lot owners can register with the Town to request enforcement of parking regulations at their lot or apply to have individuals designated under the Municipal Powers and Duties By-law 2023-021 to enforce parking. These individuals are known as municipal law enforcement officers (MLEOs).
- Mobile Compliance Officers (MCOs) are Town employees responsible for enforcing parking by-laws.
- This by-law will take effect on February 28, 2025 to allow time to develop a Towing Operational Procedure, train MLEOs and MCOs on the by-law's regulations, implement a communication program about the changes, and process necessary amendments to parking and other by-laws through Council.
- Staff will assess operational impacts as part of a municipal enforcement service review planned for 2025.

BACKGROUND:

Resolutions 1, 2 and 3 below were passed by Council at its July 9, 2024 meeting:

1. That Option #3 included in the report from Municipal Enforcement Services dated July 2, 2024 regarding towing from private parking lots be adopted and report back to Council by the end of 2024.
2. That after further discussions with the Halton Regional Police Service, Municipal Enforcement Services prepare a by-law to override the private parking lot owner's ability to tow unauthorized vehicles parked on their lot.
3. That Municipal Enforcement Services report back to Council by year end 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.

Town's Parking and Stopping By-laws

The Town has various by-laws under the authority of the Municipal Act that regulate the parking or stopping of vehicles on private property and on municipal property. These by-laws are listed in subsection 3(1) of the Towing Without the Vehicle Owner's Consent By-law attached as Appendix A to this report. The Towing Without the Vehicle Owner's Consent By-law will apply to these parking and stopping by-laws once, the amendments to these by-laws have been approved.

The Municipal Act

Subsection 101(1) of the Municipal Act provides that if a municipality passes a by-law regulating or prohibiting the parking or leaving of a vehicle on land, it may provide for the removal and impounding or restraining and immobilizing of any vehicle, at the vehicle owner's expense, parked or left in contravention of the by-law.

Subsection 101(3) of the Municipal Act provides that if signs are erected on land specifying conditions on which a motor vehicle may be parked or left on the land or regulating or prohibiting the parking or leaving of a motor vehicle on the land, a motor vehicle parked or left on the land contrary to the conditions or prohibition shall be deemed to have been parked or left without consent.

The Municipal Act also authorizes municipalities to regulate or prohibit the parking or leaving of vehicles on parking lots or on other private property without the parking lot or property owner's consent.

In consultation with Legal, MES has prepared the Towing Without the Vehicle Owner's Consent By-law to regulate towing on "land" which includes privately owned land, parking lots and land owned or occupied by the Town.

The Trespass to Property Act

Under the Trespass to Property Act, trespassing occurs when a person:

- Enters private property without permission;
- Fails to leave the property when directed to do so by the owner or an authorized person; or
- Engages in prohibited activities on the property, such as parking a vehicle on the property without consent or contrary to the parking regulations for the property.

Notice, such as a sign, must be posted where entry is prohibited.

If a person is trespassing on land, the owner of the land or their agent will report the trespassing to the police if they want action taken. The police may issue a provincial offence notice to the person, or in more serious circumstances, the police may issue a summons requiring the person to appear in court. A person found guilty of trespassing can face a maximum fine of \$10,000. Once a provincial offence notice or a summons is issued, the landowner can arrange for the towing and impounding of the vehicle.

The Towing and Storage Safety and Enforcement Act, 2021 (TSSEA)

Oversight, including certification, for the towing and vehicle storage yard sectors was transferred from municipalities to the Province on January 1, 2024 through TSSEA. TSSEA regulates and certifies the provision of towing and impounding services in the Province of Ontario.

Section 20 of TSSEA provides that there should be no provision of towing or impounding service to a vehicle without the vehicle owner's consent unless the vehicle is being impounded or stored at the direction of a police officer or other person with authority to direct impoundment or storage. For the purposes of the Towing Without the Vehicle Owner's Consent By-law, MES and Legal are interpreting "other person with authority to direct impoundment or storage" to include an MLEO who has been appointed by the Director of Municipal Enforcement Services to enforce parking on private parking lots and MCOs employed by the Town to enforce parking by-laws as well as the Director of MES or designate (the Director).

COMMENT/OPTIONS:

The Towing Without the Vehicle Owner's Consent By-law

In response to Council's direction, MES has prepared the Towing Without the Vehicle Owner's Consent By-law attached as Appendix A to this report. This By-law eliminates any common law right to tow or impound a vehicle without the vehicle owner's consent. The By-law provides that owners of land (privately owned land, parking lots and land owned or occupied by the Town) wanting to use towing and impounding as remedies for parking that is not in accordance with the applicable parking regulations must do so in accordance with the By-law or do so in accordance with the Trespass to Property Act.

The Towing Without the Vehicle Owner's Consent By-law provides that:

- An MLEO, MCO, the Director or a Halton Regional Police Officer (Police Officer) are the only persons authorized to tow or impound vehicles without the vehicle owner's consent from any land. The owner of private property or their agent who is not an MLEO is not authorized to tow vehicles under the Towing Without the Vehicle Owner's Consent By-law.
- An MLEO, MCO, Police Officer or the Director may authorize the towing or impounding of a vehicle without the vehicle owner's consent where:
 - the vehicle is parked, stopped, standing or left in contravention of the parking regulations for the land concerned;
 - the boundaries of the land are clearly defined;

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- signs have been installed in accordance with the By-law to clearly indicate the parking regulations for such land;
 - a parking penalty notice is issued by the MLEO, MCO, Police Officer or the Director; and
 - a waiting period of one hour has expired between the time the penalty notice is issued and the tow is authorized. (Exceptions to the waiting period include vehicles parked, stopped, standing or left in signed fire routes, in construction zones, which interfere with snow clearing on municipal land, in designated accessible parking spaces, which block a laneway, loading docks, ingress/egress points or driveways, on municipal land for community or special events or in emergency situations). MES is of the opinion that a one hour waiting period gives the driver of the vehicle a reasonable amount of time to return to the vehicle before it is towed and discourages predatory or fraudulent towing by towing companies.
- An MLEO must consult with the Director or designate and get the Director's approval prior to authorizing the towing or impounding of a vehicle without the vehicle owner's consent.
 - An MLEO, MCO or the Director must advise the Halton Regional Police Service (HRPS) upon authorizing a tow and prior to the tow actually occurring.
 - Signage must be installed on land where towing without the vehicle owner's consent may occur. Such signage must be in accordance with the By-law; including a towing graphic, a warning that the land is for authorized parking only, that unauthorized vehicles may be tagged and/or towed at the vehicle owner's expense, the name and telephone number of the owner of the land or their employee, agent or contractor as well as the parking regulations where parking is permitted but with limitations. The By-law does provide for the transition of existing signs, with the requirement that existing signs comply with the By-law by December 31, 2027. Any parking lots that have not previously used towing to remove unauthorized vehicles and do not have such signage at the time the By-law comes into effect will have to comply with the Towing Without the Vehicle Owner's Consent By-law's signage requirements. Signage is not required to be installed in municipal rights-of-way or on a driveway to a private dwelling.
 - The maximum rates for towing must match those submitted to the Ministry of Transportation and posted on the Ministry's website, as required by TSSEA.
 - In some cases a vehicle will be "hoisted" for a tow, but the vehicle driver arrives before the vehicle is taken away. In such cases the By-law provides a maximum \$150 "lifting fee."
 - It is **not** permitted to charge a fee for the one hour waiting period.
 - Any and all costs incurred if a vehicle is towed and/or impounded from land by authorization of an MLEO, MCO, the Director or a Police Officer in accordance

with the By-law is at the vehicle owner's expense. Any lifting charges are also at the vehicle owner's expense.

- Failure to comply with the By-law may result in the issuance of an Order and/or a \$300 administrative penalty by an MCO, the Director or a Police Officer. The amount of the administrative penalty escalates for second, third and subsequent contraventions of the same provisions of the By-law within a two-year period to \$400 and \$500, respectively. Persons who have been issued an administrative penalty may request a review by a Screening Officer and if not satisfied, a hearing before a Hearing Officer.

The Towing Without the Vehicle Owner's Consent By-law will come into force on February 28, 2025. This will give time for the preparation of a Towing Operational Procedure for implementation and application of the By-law, training MLEOs and MCOs on the By-law's regulations, a communication program for the changes, and the processing through Council of necessary amendments of the parking by-laws and other by-laws where the Towing Without the Vehicle Owner's Consent By-law is to be used.

Discussions with the HRPS

MES and Legal met with representatives from HRPS to discuss the proposed By-law. HRPS indicated that they will enforce the By-law and provided their comments on the regulations.

Amending Various By-laws

If the Towing Without the Vehicle Owner's Consent By-law is approved, the following by-laws containing towing provisions must be amended to reference the Towing Without the Vehicle Owner's Consent By-law:

- (a) Parks By-law 2013-013
- (b) Parking on Private Property Without Consent By-law 1981-65
- (c) Uniform Traffic Control By-law 1984-1

The Administrative Penalties for Non-Parking Violations and Orders By-law will also require an amendment to add the Towing Without the Vehicle Owner's Consent By-law to the list of designated by-laws.

Amendments to Parking Vehicles on Town Parking Lots By-law 1979-59 will provide for the parking of vehicles on certain municipal land where payment for parking is not required in addition to the ones where payment is required. And then the Towing Without the Vehicle Owner's Consent By-law will be referenced.

Operational and Resource Considerations

MLEO's must obtain approval from the Director or their designate before authorizing a tow. This requires the Director or designate to be available and respond promptly, ensuring that a tow can be performed after the one-hour waiting period, if necessary.

For private property owners who do not employ MLEOs, the process involves contacting an MCO to arrange a tow. The MCO must attend the site, issue a penalty notice, and either wait for the one-hour waiting period to expire or return later to authorize the tow. Additionally, they must inform HRPS prior to towing the vehicle. This process is time-consuming and will temporarily divert the MCO from other duties until the tow is completed.

It is possible that more private property owners will seek the appointment of MLEOs to enforce parking regulations on their properties. This will increase the workload for MES administrative staff, who manage these appointments and process the resulting penalty notices.

The Towing Without the Vehicle Owner's Consent By-law requires proper signage at locations where towing may occur, including municipal properties. This could have budgetary impacts in 2025 for various departments if new signage needs to be installed at facilities, parks, cemeteries, harbours, or other municipal lands. Furthermore, any existing towing-related signage on municipal land will need to comply with the By-law by December 31, 2027.

Operational impacts of this By-law will be assessed in the first half of 2025 and as part of the Municipal Enforcement Services review which is planned for 2025. This review will assess service level options and operational requirements for future consideration at Council.

CONSIDERATIONS:

(A) PUBLIC

The following were provided with email notification of the date of this meeting and with links to access the agenda and how to delegate at the meeting:

- Parking enforcement companies that employ MLEOs for parking enforcement on private parking lots
- Landowners registered with the Town for parking enforcement
- The owners of parking lots where predatory towing has occurred or is occurring
- Delegates who addressed Council on July 9, 2024
- Persons who requested notification
- Resident and Community Associations

- BIAs
- Oakville Chamber of Commerce

Landowners registered with the Town for parking enforcement were provided with written notification of the date of this meeting and with information on how to access the agenda and delegate at the meeting.

A public notice regarding consideration of the Towing Without the Vehicle Owner's Consent By-law was posted on oakville.ca.

MES contacted several tow companies that provide a majority of the private property towing in Oakville to advise of the proposed by-law from a towing operator perspective.

If the Towing Without the Vehicle Owner's Consent By-law is approved, staff will update oakville.ca to provide information on towing requirements that will come into force on February 28, 2025. In addition, MES will send out letters or emails to those noted above to advise of the passage of the by-law.

(B) FINANCIAL

There may be a budget impact to various departments in 2025 and 2026 due to the By-law's signage requirements. Future staff impacts will be assessed as part of the municipal enforcement service review.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Municipal Enforcement Services, Legal and the Halton Regional Police Service have been involved in the review process for the Towing By-law. MES has consulted with Facilities Services, Recreation and Culture, and Parks & Open Space regarding signage requirements where towing may be employed.

(D) COUNCIL STRATEGIC PRIORITIES

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

(E) CLIMATE CHANGE/ACTION

N/A

APPENDICES:

Appendix A – By-law 2024-187, a by-law to regulate the towing of any vehicle from land without the consent of the vehicle owner

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