

COMMITTEE OF THE WHOLE (WORKING SESSION) – MAY 13, 2008

ADMINISTRATIVE MONETARY PENALTIES

Recommendation

The Commissioner of Legal and Administrative Services and the Director of Enforcement Services recommend:

1. That this report be received; and
2. That Staff proceed to develop a system of Administrative Monetary Penalties and report back to the Committee of the Whole Working Session in the Fall with a comprehensive report outlining implementation steps and cost analysis.

Economic Impact

An estimation of the expected costs and revenue benefits will be developed and presented to Council in the Fall.

Communications Plan

An extensive communications plan will be developed as part of the project.

Purpose

This report is to provide information relating to the establishment of a system of administrative monetary penalties for Licensing and Parking By-law enforcement

Background - Analysis and Options

Bill 130, the *Municipal Statute Law Amendment Act*, 2006, amended the *Municipal Act*, 2001 on January 1, 2007, to permit municipalities to establish a system of administrative penalties for the enforcement of Licensing and Parking By-laws. The amendment also permits a municipal council to delegate its quasi-judicial and administrative functions to individuals appointed by the municipal council, such as an officer, employee, or agent of the municipality.

Generally speaking, an administrative monetary penalty is an alternative to the traditional enforcement of the Licensing and Parking By-laws. Under such a system, an Enforcement Services Officer would issue a penalty notice if he or she believed that an individual was in contravention of the Licensing or Parking By-laws. If this individual wants to dispute the penalty notice, he or she would have a right to appeal to a Decision Maker, who would have authority to affirm, vary or rescind the penalty notice. This Decision Maker would be an individual appointed by Council. Subject to the case law and the Regulations passed under the *Municipal Act*, 2001, the City has discretion to determine the amount of the administrative monetary penalty, who can be appointed as the Decision-Maker, to develop its own procedures for the imposition and collection of the administrative monetary penalty, as well as the procedures to be followed during the appeal process.

The City of Oshawa has recently passed By-laws to implement this system for its Licensing Bylaw, and the City of Toronto and City of Ottawa are in the process of implementing it.

Current Licensing and Parking By-law Regime

While enforcing an infraction of the Licensing or Parking By-laws, an Enforcement Services Officer can lay charges under the *Provincial Offences Act*, which would commence proceedings in the Provincial Offences Court.

With Parking By-law infractions, these proceedings are commenced by way of a Parking Infraction Notice, where the offender can either pay the set fine, or appear in front of an adjudicator in what is commonly referred to as "First Attendance Court". The adjudicator can vary, amend or rescind the parking infraction notice. The offender can elect to go to trial in Provincial Offences Court if a resolution is not reached at this stage.

With Licensing By-law infractions, an Enforcement Services Officer can issue a Part I or Part III charges, and the offender can either plead guilty or not guilty in Provincial Offences Court. If the offender pleads not guilty, a trial of the charge will be held. With certain contraventions of the Licensing By-law, the City can revoke or suspend the license that is the subject matter of the charge.

The Enforcement steps relating to the Licensing and Parking By-laws are challenged in several ways:

- Prosecutions are hampered by the persistent lack of judicial (Justices of the Peace) resources resulting in significant delays
- Because Provincial Offences Courts deal with a wide range of matters from Bail Hearings to *Highway Traffic Act* fatalities, municipal by-law matters are often perceived as minor in nature, so fines levied by the courts are often nominal
- Case law has made all criminal protections and defences available to defendants of even the most minor of municipal infractions, including Parking and Licensing, which results in lengthy proceedings and delays
- The City is allocated only 2 court days per month in Provincial Offences Court to hear all disputed matters

The significant delays often result in charges being stayed by the Provincial Offences Court, as section 11(b) of the *Charter of Rights and Freedoms* mandates that a person has a right to trial within a reasonable period of time after they have been charged. While each case turns on its facts, the case law has suggested that an 8 month waiting period will generally trigger section 11(b) of the *Charter of Rights and Freedoms*.

Enforcement Services issued approximately 40,000 parking tickets annually in 2006 and 2007. Through effective utilization of First Attendance, the vast majority of parking tickets are paid without trial. Unfortunately, even with the vast majority of parking tickets being resolved at the First Attendance stage, there is a growing backlog in trials. Currently there are approximately 1800 trials outstanding, and due to the limited court time available, there is little prospect of eliminating the backlog as it is only possible to list 45 charges to court each month. Likewise, Enforcement Services has laid 436 licensing charges in 2006 and 2007. If these tickets are disputed, the trial waiting time, including requested adjournments, can be up to 18 months.

When a charge is successfully prosecuted, the fines imposed by the Court upon conviction are often nominal.

Administrative Monetary Penalty System

An administrative monetary penalty is a penalty imposed directly by the regulatory authority, in this case the City, upon an offender within the context of an administrative process rather than a judicial process. Such a system can be a useful tool to encourage compliance with the Licensing and Parking By-laws without having to resort to the traditional processes.

a) Process

The process for a parking administrative monetary penalty system is set out in Ontario Regulation 333/07 (hereinafter the "Regulation"). According to the Regulation, any proposed system of administrative monetary penalties for parking must incorporate a number of features, including:

- If an Enforcement Services Officer witnesses a contravention of a Parking By-law a penalty notice may be issued for this contravention. The penalty notice would be given to the person as soon as is reasonably practicable, and will include basic information that the person of the contravention.
- The person who receives a penalty notice shall be given the right to request a review of the administrative penalty by a screening officer appointed by the municipality.
- The Screening Officer may cancel, affirm, or vary the penalty, upon such grounds that are set out in the administrative penalty by-law.
- A person who receives notice of the decision of the Screening Officer shall, in such circumstances as may be specified in the administrative penalty by-law, be given the right to a review of the Screening Officer's decision by a Hearing Officer appointed by the municipality for that purpose.
- The Hearing Officer may cancel, affirm or vary the decision of the screening officer upon such grounds as are set out in the administrative penalty by-law. The decision of the hearing officer is final.

There are no regulations that deal specifically with a licensing administrative penalty process. However, Staff recommend that the process for the licensing administrative penalty mirror the mandated process for the parking administrative penalty system.

As a result of the new process that will be required, there will be one time costs associated with the process development, computer software modifications, new ticket design, and potentially hardware purchases. These costs will be itemized in the follow up report.

b) Decision Maker

The Screening and Hearing Officers are quasi-judicial officers. As such, these Decision Makers must be independent and free from political interference. To address this issue, the Regulation and the common law rules of procedural fairness require the following:

- The implementation of a policies and procedures to prevent political interference in the administration of the system.
- The implementation of guidelines to define what constitutes a conflict of interest in relation to the administration of the system, to prevent such conflict of interests and to redress such conflicts should they occur.

The implementation of these policies will ensure against any perception that Council can influence the outcome of a charge, or that the Decision Maker lacks independence due to the fact of the employment relationship at the City.

The City already employs an individual who acts as a First Attendance officer for Parking By-law matters. This individual's duties are similar to the proposed duties for the Screening Officer. An appropriately qualified individual will need to be retained as a part-time per diem Hearings Officer. A By-law appointing these individuals as Screening and Hearing Officers as well as a By-law delegating authority to these individuals will need to be enacted.

c) Penalties

The Regulation sets out the guidelines for administrative penalties for Parking By-law violations:

- The amount of the penalty shall not be punitive in nature
- The amount of the penalty shall not exceed the amount reasonably required to promote compliance
- The amount of the penalty shall not exceed \$100.

Staff recommend that the administrative penalty for the violations of the Parking By-law be at the current fine levels. It should be noted that the *Municipal Act* does not permit a municipality to impose an administrative penalty system for a disabled parking offence. Offences related to disabled parking will continue to be prosecuted by way of Part I tickets under the *Provincial Offences Act*.

Staff recommend adhering to the aforementioned guidelines with respect to Licensing By-law offences, with the exception of the maximum amount. Licensing By-laws by their nature are related to the regulation of for-profit businesses to protect the public interest. Accordingly, a more significant administrative penalty is appropriate. Staff recommend an administrative penalty of \$350 to promote compliance.

It is important to note that the creation of an administrative penalty system will not preclude the City from pursuing charges in the Provincial Offences Court for cases that demand more progressive enforcement strategies.

In addition to the administrative penalty, the City may impose administrative fees, such as:

- If an administrative penalty is not paid within a specified time,
- Late payment fees, and
- A fee in respect of the failure of a person to appear at the time and place scheduled for a hearing by a hearing officer.

d) Benefits of the Administrative Monetary Penalty Process

The benefits of this process are anticipated to be:

- More streamlined and efficient offence dispute resolution process
- Potential increase in compliance and revenues as matters will not be lost in court due to extensive delays

- The City has the ability to schedule additional Hearing Days should a backlog of hearing requests become too large
- The City has an increased ability to collect or enforce the payment of outstanding penalties
- An application for a license or renewal of license may be denied if the applicant has outstanding monetary penalties owed to the City
- By removing the volume of parking and licensing tickets disputes from the courts there be a resulting increase in available court time for other matters, such as Property Standards charges

e) Potential Issues with the Administrative Penalty Process

The potential issues of this process are:

- Perception that Council could control the outcome of charges because this would now be a City function and not a Provincial Offences Court function
- Perception that Hearings Officer decisions may be biased as he or she would be employed by the City
- One time costs (to be determined) for process development, including new tickets and computer software modifications
- Ongoing costs of the Hearings Officer

The potential issues regarding public perceptions would be addressed by the implementation of policies dealing with political interference and conflicts of interest. Such policies are required by the Regulation. The costs for process development are one time costs, which would likely be offset by increased revenues. Lastly, the costs associated with the Hearings Officer would be minimal, given that such an individual would not be a full time employee, but rather someone employed on a per diem basis. At this time, it is anticipated that a Hearings Officer would sit once a month to hear cases. Furthermore, any such costs would likely be recovered through increased revenues. Therefore, the Administrative Monetary Penalties will likely be of benefit to the City, and the benefits should outweigh any of the negative issues that have been identified within the body of the report.

Next Steps

Should Council wish to proceed with this initiative, the next steps will be to establish project costs, including one time and ongoing expenditures, and potential revenue estimates; draft policies and processes for both Licensing and Parking cases; establish a potential project plan that would allow the initiative to be rolled out in the Fall of 2009; and an initial communications plan.

In order to include any costs in the 2009 Operating Budget, staff are recommending that a report be brought back in the early Fall to give Council time to consider the project and impacts.

Relationship to Vaughan Vision 2020

This report is in keeping with the Vaughan Vision in that it speaks to enhancing productivity, cost effectiveness, and innovation.

The necessary resources have yet to be allocated.

Regional Implications

This project will have a regional impact as the courts are currently managed by the Region. Dialogue will take place to ensure proper reallocation of court time.

Conclusion

The City has authority under the *Municipal Act, 2001* to create an administrative penalty system for Parking and Licensing By-laws. This alternative adjudicative process will allow for a more streamlined and efficient offence dispute process which will in turn promote greater compliance with City By-laws, and increased revenue.

The administrative penalty system also lessens the volume of cases currently in Provincial Offences Court, which will result in increased court time for other matters, such as Property Standards charges.

Attachments

N/A

Report prepared by:

Rick Girard
Supervisor, Uniform Group Administration/First Attendance Adjudicator

Tony Thompson
Director, Enforcement Services

Chris G. Bendick
Solicitor

Respectfully submitted,

Janice Atwood-Petkovski
Commissioner of Legal & Administrative Services
and City Solicitor

Tony Thompson
Director, Enforcement Services