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Town of Aurora

General Committee Report

No. CS22-037

Subject: Administrative Monetary Penalty System (AMPS)

Prepared by: Alexander Wray, Manager of Bylaw Services

Department: Corporate Services

Date: June 7, 2022

Recommendation

1. That Report No. CS22-037 be received; and
2. That staff be authorized to implement the necessary processes and procedures for the Administrative Monetary Penalty System (AMPS); and
3. That staff bring forward the Administrative Penalty By-law at a future Council meeting for enactment; and
4. That staff bring forward the Screening and Hearing Officer By-law at a future Council meeting for enactment; and
5. That staff bring forward amendments to the Parking Control By-law #4574-04.T, as amended, at a future Council meeting for enactment.

Executive Summary

The purpose of this report is to seek Council's approval to implement the Administrative Monetary Penalty System (AMPS) By-law. The proposed AMPS By-law will provide a customer focused dispute resolution processes and allow for new prosecutions matters to be heard by the Town and in an expediated timeline in comparison to the existing Provincial Offences Act (POA) process.

- The implementation of an AMPS By-law will make some alterations to the Town's current processes.
- The Administrative Monetary Penalty System will provide significant benefits to the Town and our residents.

- Implementation of Screening and Hearing Officers are a required part of an AMPS program.
- The proposed AMPS program will implement minor fees which have been benchmarked with municipalities across the GTA.
- An AMPS implementation working group has been established with neighbouring municipalities.
- An amendment to the Town's Parking and Traffic By-law No. 4574-04.P is required to allow for the issuance of penalty notices.
- Staff are recommending a phased implementation approach for non-parking related by-laws.

Background

Parking tickets issued in the Town of Aurora are currently issued, processed and adjudicated pursuant to the *Provincial Offences Act* (POA), and are heard in the Ontario Court of Justice (Provincial Offences Court). The POA prescribes the process, and as a result, under this regime there is limited opportunity for a municipality to provide a revised process that may be more flexible and suit the nature of the municipality. Further, the Region prosecutes parking tickets on the Town's behalf.

In 2007, changes were made to the *Municipal Act, 2001* to allow municipalities to develop an Administrative Monetary Penalty System (AMPS) to process and adjudicate parking violations. Subsequent amendments to the *Municipal Act, 2001* extended the authority to establish an AMPS program to include accessible parking by-laws (which were previously excluded), as well as other types of municipal by-laws. O. Reg. 333/07 (the Regulation) sets out specific requirements that must be met in order to establish an AMPS program for parking. Staff plan to transition other Town by-laws to AMPS in 2023 through a gradual approach. By doing so it will provide a consistent, customer focused process for residents throughout applicable Town By-laws.

In essence, an AMPS program replaces the prescribed process in the POA, and can be designed to meet the needs of the municipality, provided the parameters of the Regulation are met. In accordance with the Regulation, the proposed AMPS process would provide for resolution of a dispute at a screening review. If the screening decision is contested, the individual can then request a hearing. Unlike the current POA system, which provides for appeals and re-openings following a conviction, the decision at a hearing in the AMPS program is final and subject to limited review.

An AMPS program will provide for the same open, transparent, and objective process as is currently in place with the POA system while maintaining the fundamental principles of open court and due process.

Several municipalities across Ontario (i.e. Vaughan, Newmarket, Oshawa, Burlington, Markham, Hamilton, Brampton, Mississauga, Oakville, Kitchener and Waterloo) have implemented AMPS programs and all feedback received indicates that their processes are running with increased efficiency and in a cost effective manner.

Aurora has partnered with the Town of Georgina and King Township to develop this AMPS initiative, which is also proposed for both municipalities. Research and development resources have been shared to date and the plan moving forward is to share resources whenever possible. The development phase of the program began, in earnest, in late 2021. Beyond Bylaw Services staff from the 3 municipalities, the project has also involved staff input from Clerks, IT, Finance, Legal and Communications from the respective municipalities.

Although AMPS can involve a variety of municipal by-law violations, staff are proposing to commence the AMPS program with parking violations, which represents the single largest volume of Court activity for Aurora. This is consistent with the approach of many other municipalities. It is anticipated that other Aurora by-laws will transition into the AMPS program in Q3 2023.

Analysis

The implementation of an AMPS By-law will make some alterations to the Town's current processes.

The following is an overview of how the proposed AMPS By-law will function:

1. The current process of physically issuing of parking ticket, now to be known as a penalty notice, remains essentially the same.

In most situations, Bylaw Officers will still issue the penalty notice by personally serving it to the driver of the vehicle or affixing it to the vehicle in violation. In some situations, where Officer safety may be of concern, the AMPS system will provide Officers with the opportunity of sending the penalty notice in the mail.

2. Residents will be able to initiate their dispute resolution process in a faster manner than the existing POA process while potentially reducing the need to take time off and travel to the Regional courthouse.

When a resident wishes to dispute a penalty notice they've received, the resident will be able to attend an Access Aurora counter, where they can schedule a date and time to arrange a screening meeting. Screening meetings will occur at pre-determined dates and times with a Screening Officer. To reduce the need for residents to take time off work and travel to Town facilities, residents will be provided the option of conducting a virtual screening whenever possible. In situations where a resident is unable to conduct a virtual hearing, ex. Accessibility requirements, lack of internet access, etc. Town staff will arrange for an in-person hearing date.

3. The Town's Licensing and Court Administrator will be appointed as a Screening Officer and will have the authority to conduct screening meetings.

Bylaw Services will utilize existing staff to administer the screening process of the AMPS By-law. This can be achieved by shifting staff time away from the POA and court system and reallocating the workload internally to the AMPS process. The AMPS process will provide staff with increased discretion to resolve penalty notices. As an example, this may include the potential to reduce the fine or provide for a payment program, if appropriate. In comparison to the current POA process, residents' only options to resolve a parking ticket are to pay the fine amount or request a trial and attempt to resolve the matter in Court.

4. Residents will have the opportunity to appeal decisions beyond their meeting with the Town's Screening Officer.

In situations where a resident is not satisfied with the outcome of a screening meeting, they will have the opportunity to request a hearing. A hearing is similar to the process of requesting a trial in a Provincial Offences Court, however it is contemplated that the new hearings process will be less formal, less intimidating, and more timely.

5. Hearings Officer(s) will be appointed by the by way of Delegated Authority and will adjudicate matters at a hearing.

Hearings Officers will be independent of Town staff and Council and are often retired Justice of the Peace, Lawyers, Paralegals, etc. They will ensure that judicial best practices are adhered to and residents are provided a fair and expedited hearing process.

6. Officers would not be required to attend Hearings meetings unless required by the Hearings Officer.

When a Hearings Officer is conducting a hearing meeting, the investigating Officer is not required to attend the meeting unless the Hearings Officer has requested his/her attendance. As a result, this will free up staff resources so that Officers can remain in the community to address resident concerns and complaints.

7. The process for collecting unpaid parking penalty notices will remain the same.

As in the current POA process, a penalty notice that remains unpaid, whether it goes through the full adjudication process or not, will be sent to MTO and be applied to the license plate of the subject vehicle at plate renewal.

Implementation of Screening and Hearing Officers are a required part of an AMPS program.

Provincial regulations requires that any AMPS system must include a formalized two (2) step resolution process for anyone wishing to dispute and resolve a parking violation. These two (2) steps are known as a “screening” and a “hearing”. A By-law to establish the position of screening officer and hearing officer, and to provide for appointment of individuals as screening/hearing officers, is required.

Screening Process

The screening process will involve the penalty notice recipient attending a virtual hearing or an in person meeting, during regular business hours, to request to speak to a screening officer, regarding the ticket. The existing administrative staff within Bylaw Services, along with the Officers and Managers, will be appointed as screenings officers. The screening officer will discuss the circumstances regarding the ticket with the person and provide his/her decision on how to resolve the ticket. As mentioned earlier, there will be more options available to staff to facilitate resolution of the ticket. If the recipient holder is satisfied with the decision, the matter is considered resolved once he/she has paid any penalty amount that forms part of the resolution. Conversely, if the ticket holder is not satisfied with the decision, he/she can request a hearing.

Hearing Process

Once a request for a hearing is received, staff will process the request, assign a hearing date and inform the requestor. The hearings will take place virtually or in person at a Town facility. At this time, staff anticipate there to be one (1) hearing date set each month, with the option of sharing resources with participating N6 municipalities. While

a Town of Aurora ticket holder is likely to be given a hearing date in Aurora as the first option, he/she may be provided a date in Georgina or King Township, if it makes sense to do so. Equally, Georgina or King Township ticket holders may attend a hearing in Aurora if it makes sense to do so.

A hearing is presided over by a hearings officer. This person will be appointed by the municipality and must not be a person who is currently employed by the municipality. The Town will be represented in the hearing by a staff person who has knowledge of the ticket being disputed. After hearing comments by both sides, the hearing officer will render a decision that, once rendered, will be final and binding. If there is a monetary penalty owed by the ticket holder, the matter is not considered resolved until such time as the penalty amount is paid in full.

As required by the Regulation, staff have developed a draft Screening and Hearing Officer By-law for Council's consideration (Attachment 4 – Proposed Screening and Hearing Officer By-law). The By-law provides for the appointment of Screening and Hearing Officers and sets out restrictions on who can qualify for these positions, in order to ensure the integrity of the process.

It is recommended that the appointment of screening officers be delegated to staff similarly to the current process for Bylaw Officers and the appointment of Hearing Officer(s) be delegated to the Clerks Office

The Administrative Monetary Penalty System will provide significant benefits to the Town and our residents.

The implementation of an AMPS program will provide significant benefits to residents, businesses, and the Town. The following points provide a brief explanation of these benefits:

1. The program will enhance customer service and will be less intimidating than the existing Provincial Offences Court process.

By implementing the AMPS process, staff will be able to conduct screenings and hearings internally. This will allow residents to dispute their concerns at a local level and remove the lengthy delays experienced in the Court system.

2. Staff will have increased flexibility and discretion to attempt to resolve parking disputes over issued parking penalty notices.

The proposed screening process, which will be available to residents remotely and in person, will allow staff to attempt to resolve parking disputes in the early stages of the process. By doing so, the need for residents to incur added costs and/or time will be reduced as they will no longer need to attend court on multiple dates.

3. Removing parking tickets from the Court process will allow the Regional Court Administration to reallocate Court time and resources, to address other pressures.

Due to the backlog created during the COVID-19 pandemic, coupled with existing pre-pandemic delays, the Provincial Court system is exploring opportunities to modernize the delivery of court services in Ontario. This includes encouraging municipalities to implement AMPS processes for minor offences such as parking violations.

4. AMPS will provide for less formal hearings at a local level while upholding existing requirements under the *Statutory Powers Procedure Act* and the Policies to be established in accordance with the Regulation.

AMPS implementation will allow for a friendlier, less intimidating, and more effective hearing process while also ensuring legislative requirements under the *Statutory Powers Procedure Act* are adhered to. Staff will also be implementing additional policies to ensure compliance with the Act and to maintain the integrity of the AMPS processes.

5. Hearings under the AMPS system will be within the Town's control and will not be dependant on pre-determined court schedules at the Region.

With the volume of POA charges before the court system, the wait time for an initial Court date can be as much as 8 to 9 months. Under the AMPS program, staff anticipate a significantly reduced wait time of approximately 2-3 months. It is anticipated that the efficiencies found will also reduce current administrative impacts as tickets will be resolved sooner.

6. The AMPS system will provide an opportunity to mitigate certain enforcement safety concerns.

The AMPS system provides frontline Officers options to mitigate safety concerns relating to enforcement issues. This includes parking enforcement in school zones and fire route offences. The current Provincial Offences Act requires that a parking ticket be placed on the vehicle or served on the person at the time of the offence. There are times when this requirement can result in safety concerns, particularly when the driver

of the vehicle leaves the area quickly. The AMPS program provides the opportunity for a ticket to be mailed to the driver after the fact.

The proposed AMPS program will implement minor fees which have been benchmarked with municipalities across the GTA.

The Provincial Offences Act currently provides for fail to respond fees and plate denial fees. Under this system, as prescribed by provincial legislation, these fees are shared between the municipality, the Region and the Ministry of Transportation. Under the AMPS program, the Town would establish the fees to be imposed on late/defaulted penalties, and all such fees will remain with the municipality. As such, an increase in revenues is anticipated. Fees proposed are described in Attachment 2 – Proposed AMPS Fee Schedule

Attachment 2 – Proposed AMPS Fee Schedule indicates that the fees proposed by staff are in line with those in place in other municipalities. The following is a brief explanation of each fee:

- **MTO search fee** – the Town currently pays a fee of \$8.25 to the Ministry of Transportation for every request for license plate ownership that is sent to them. The ownership request is only submitted when a person has failed to respond to their ticket within a prescribed time. The purpose of the request is to mail out reminder notices. Under the current system, the Town does not have a way to recover costs associated with this fee as final adjudication is handled by the Regional Municipality of York. Under AMPS, this fee will be added to the face value of the outstanding ticket for each request, along with a nominal administrative fee;
- **Late Fee Parking** – this fee would be added to the face value of the penalty notice for parking contraventions when a person fails to respond or to pay within the required time, after having been given time to do so and after having received a mailed reminder notice of the outstanding ticket. It should be noted that the initial timeframe provided for a person to respond to the penalty notice under AMPS will be increased from the current 15 days to 30 days. This provides added opportunity for the offender to make payment or choose a screening, without incurring any fees.

The current late fee of \$16 is imposed when a person fails to respond to a parking ticket. This amount is prescribed by legislation under the POA and has been in place for over 20 years. The \$16 fee is currently shared with the Region. This fee does not reflect the increase in administration costs related to tracking and processing defaulted tickets, over the years. Municipalities do not have any discretion to adjust fees under the POA system. Staff are proposing a fee of \$25, which is in line with other municipalities, to account for increased costs administrative costs. Further, this fee must act as a deterrent for failing to respond to a penalty notice and/or an incentive to respond within the prescribed time;

- **Late Fee Other By-laws** – this fee would be added to the face value of the penalty notice for non-parking by-laws when a person fails to respond or to pay within the required time, after having been given time to do so and after receiving a mailed reminder notice of the outstanding penalty notice. It should be noted that the initial timeframe provided for a person to respond to the penalty notice under AMPS will be increased from the current 15 days to 30 days. This provides added opportunity for the offender to make payment or choose a screening, without incurring any fees;
- **Screening Non-Appearence Fee** – This fee would be added to the face value of the penalty in situations where an individual has requested a screening review hearing and fails to show up. This fee is considered cost recovery for the staff time and resources required to schedule and prepare for the screening review;
- **Hearing Non-Appearence Fee** – This fee would be added to the face value of the penalty in situations where an individual has requested a hearing and fails to appear. The Town will be required to cover all costs related to hearings. Therefore, if someone fails to show up for their appointed time, the Town will incur costs related to this process and the individual would be assessed a non-appearance fee. This fee can be considered a carryover from the current system within the POA, as it is an already prescribed non-appearance fee;

- **Plate Denial Fee** – This fee will be applied in situations when a person has failed to resolve their ticket appropriately, after all options and dispute resolution mechanisms have been made available. The plate denial process has been in place for many years and currently a portion of this fee has been provided to the municipality, under the POA legislation. As such, this reflects a fee under the current system.

It is important to understand the rationale for these fees being in place. When a person fails to respond to a parking ticket issued within the appropriate time frame, there are administrative costs associated with the municipality having to receive license plate information, send out reminder notices, etc. These administrative costs can increase the longer a ticket remains unresolved, up to and including sending the license plate and related information to the Ministry for the plate denial process to be applied. These costs should not be absorbed by the tax base revenue for situations where someone has failed to respond to their obligations, after receiving a penalty notice.

It is also important to note that the AMPS processes being proposed by staff will provide for more time to respond to the notice before late fees are applied, than is currently allowed under the prescribed system.

An AMPS implementation working group (AIWG) has been established with neighbouring municipalities.

The AMPS Implementation Working Group (AIWG) was formed in late 2021, with the objective of investigating AMPS. The (AIWG) are collectively recommending moving away from processing municipal by-law infractions through the Provincial Offences Act, to the Administrative Monetary Penalty System.

Staff members from the Towns of Aurora, King, and Georgina, engaged a consultant from Municipal Compliance Solutions with an objective of researching and developing an AMPS framework. This collaborative approach between participating N6 municipalities is expected to minimize impacts on the courts, streamline and enhance customer service, and identify future opportunities for resource sharing in the participating municipalities. To ensure local consistency and adherence to best practices, the AIWG has sought support and advice from both the Town of Newmarket, and City of Vaughan on best practices and procedures.

An amendment to the Town's Parking and Traffic By-law No. 4574-04.P is required to allow for the issuance of penalty notices.

In order for Bylaw Services to issue penalty notices under the proposed AMPS By-law, an amendment is required in the existing Parking and Traffic By-law No. 4574.04.P. As a result, the parking provisions contained therein will no longer be subject to the *Provincial Offences Act*, but will be governed by the AMPS process.

The amendments to this by-law, will come into effect on the commencement of the AMPS program. All tickets issued prior to that time will continue to be adjudicated under the existing POA system until their completion.

Attached, for Council's consideration, is a draft by-law amendment (Attachment 3 – Draft Parking By-law Amendment) to amend the Parking and Traffic By-law No. 4574-04.P. All other elements of the by-law remain the same and enforcement practices will remain unchanged.

Staff are recommending a phased implementation approach for non-parking related by-laws

Bylaw Services in conjunction with the Town's AMPS consultant are recommending a phased implementation for non-parking by-laws. Staff believe that a phased implementation approach will allow for a clear public communication campaign, an opportunity to address any issues that arise, and refinement of best practices. Beginning in early Q2 2023, staff will begin transitioning the Town's remaining applicable by-laws to the AMPS system.

Advisory Committee Review

N/A

Legal Considerations

The Regulation requires a municipality establishing an AMPS program for parking to pass an AMPS By-law, which designates the parking by-laws and provisions to which AMPS will apply, and establishes the adjudication process. The POA will no longer apply to the designated parking by-laws/provisions for new offences once the AMPS program is implemented. In its place will be an adjudication process that is designed to be more flexible, efficient, and expedient for residents.

In addition, to implement the proposed AMPS program, Council will be required to enact a Screening and Hearing Officers Bylaw to establish and appoint these officers and amend the Town's Parking Control By-law to designate certain provisions to be governed by the AMPS process as opposed to under the Provincial Offences Act.

Lastly, a policy is also required to implement the program, which will be approved by the CAO in accordance with the Town's delegated authority by-law.

Financial Implications

All AMPS Program implementation costs, such as project management, software upgrades and the redesign of forms and tickets will be funded through capital project no. 24029's existing approved capital budget authority of \$150,000 which is mostly funded through provincial grants.

It is the Town's objective to deliver the new AMPS program, if approved, with its existing approved positions. The AMPS will require an estimated maximum ongoing incremental operating cost of approximately \$6,000 for Hearings Officers (third party contractors) who will adjudicate parking hearings. It is anticipated that the Hearing Officers would be shared between Aurora, King and Georgina, and that hearings would take place approximately once per month with each municipality bearing their respective cost of hearings.

The implementation of an AMPS program will not significantly alter our current process for how parking tickets (now penalty notices) are issued, nor will it have any impact on the number of parking tickets issued. However, staff anticipate an increase in parking fine revenue as it relates to the collection of newly proposed late fees and charges that the Town would implement as part of its AMPS program. Unlike the existing POA system, the Town will be able to keep 100 percent of its penalty notice revenues rather than having to share it with York Region and the Province. All of the AMPS program proposed fees and charges can be found under Attachment 2 – Proposed AMPS Fee Schedule . Staff are confident that these revenues will adequately cover any arising incremental operating costs from this program for the remainder of this year. Upon implementation, staff will monitor and evaluate late fee revenues and incorporate any revenue adjustments into an upcoming budget process.

Under the current POA system, municipalities are required to obtain approval from the Ministry of the Attorney General to implement new or revise existing parking fines. Under the AMPS program, this requirement is eliminated, Council has the authority to approve any new, or revise any existing, penalty (fine), as a Schedule to the AMPS By-law. At this time staff are not recommending any adjustments to the existing schedule of fines, all applicable fines and charges will remain unchanged under the new AMPS By-Law as they are currently presented under the existing Parking By-Law.

Communications Considerations

A communications plan will be developed to inform, provide information and generate awareness to the public.

Climate Change Considerations

The recommendations in this report may reduce greenhouse gas emissions because of a reduction in travel due to the proposed virtual hearing and screening process(s).

Link to Strategic Plan

The Administrative Monetary Penalty System (AMPS) By-law supports the Strategic Plan Goals of Supporting an Exceptional Quality of Life for all and investing in sustainable infrastructure.

Alternative(s) to the Recommendation

1. Council provide direction to staff

Conclusions

It is staff's opinion that implementing an AMPS process, as outlined in this report, to transition the parking ticket adjudication process away from the formalized process prescribed by the POA, will be a significant improvement in customer service. In essence, the current "legal" process will be eliminated, in favour of an enhanced dispute resolution mechanism.

Attachments

Attachment 1- AMPS Procedural By-law Draft

Attachment 2 – Proposed AMPS Fee Schedule

Attachment 3 – Draft Parking By-law Amendment

Attachment 4 – Proposed Screening and Hearing Officer By-law

Previous Reports

N/A

Pre-submission Review

Agenda Management Team review on May 19, 2022

Approvals

Approved by Techa van Leeuwen, Director, Corporate Services

Approved by Doug Nadorozny, Chief Administrative Officer