

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Parking and By-law Services Division

Report to: Chair and Members Economic Development and Planning Committee	Submitted by: Tim McCabe General Manager Planning and Economic Development Department
Date: June 18, 2008	Prepared by: Marty Hazell (905) 546-2424 Ext. 4586 Paul Buckle (905) 546-2424 Ext. 1314

**SUBJECT: Hamilton Highway Accident Non-Solicitation By-law (PD02234(a))
(City Wide)**

RECOMMENDATION:

- (a) That the solicitation or making or conveying an offer of business services or goods to the driver of a vehicle involved in an accident or apparent accident, or to any other person involved in a vehicle accident or apparent accident, be prohibited within 200 metres of the scene of the vehicle accident, or apparent accident, or a vehicle involved in an accident, on a highway.
- (b) That the solicitation or making or conveying an offer of business services or goods to anyone going to or from, or attending a collision reporting centre to report a vehicle accident, or apparent accident, be prohibited while the person soliciting or making or conveying the offer of business services or goods is within 200 metres of the premises of the collision reporting centre.
- (c) That soliciting the hiring of a tow truck, or making or conveying an offer of towing services within 200 metres of the scene of a vehicle accident or apparent accident or of a vehicle involved in an accident on a highway be prohibited.
- (d) That soliciting the hiring of a tow truck, or making or conveying an offer of towing services to anyone going to or from or attending a collision reporting centre to report a vehicle accident, or apparent accident, be prohibited while the person soliciting or making or conveying the offer of towing services is within 200 metres of the premises of the collision reporting centre.
- (e) That the parking, stopping or standing of a tow truck on a highway within 200 metres of the scene of a vehicle accident or apparent accident or a vehicle involved in an accident be prohibited.

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- (f) That the prohibition set out in recommendation (a) above, shall not apply to business services or goods where the person soliciting or making or conveying the offer of business services or goods is within 200 metres of the scene of an accident or a vehicle involved in an accident at the request of emergency personnel, a person engaged in highway maintenance or a person involved in the accident.
- (g) That the prohibitions set out in recommendation (b) above, shall not apply to business services or goods where the person soliciting or making or conveying the offer of business services or goods is within 200 metres of a collision reporting centre at the request of emergency personnel, a person engaged in highway maintenance or a person reporting the accident.
- (h) That the prohibitions set out in recommendations (c) and (e) above, shall not apply to a person who is within 200 metres of the scene of an accident or a vehicle involved in an accident at the request of emergency personnel, a person engaged in highway maintenance or a person involved in the accident.
- (i) That the prohibitions set out in recommendation (d) above, shall not apply to a person who is within 200 metres of a collision reporting centre at the request of emergency personnel, a person engaged in highway maintenance or a person reporting the accident.
- (j) That a police officer or a municipal law enforcement officer, upon discovery of any tow truck parked or standing in contravention of recommendation (e) above, be authorized to cause the tow truck to be moved, or taken to and placed or stored in a suitable place, and all costs and charges for the removal, care and storage of the tow truck, if any, shall be a lien upon the tow truck, which may be enforced in the manner provided by the Repair and Storage Liens Act.
- (k) That City of Hamilton By-law No. 02-362 be repealed and that a by-law satisfactory to the City Solicitor and in the form attached as Appendix A to Report No. PD02234(a) be passed and enacted.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Report PD02234(a) and the recommended by-law attached thereto, has been brought forward at the request of the Hamilton Police Service and representatives of the

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Hamilton District Auto-body Repair Association (HARA) to resolve concerns respecting the existing City by-law prohibiting the soliciting for towing and/or auto repair services from persons recently involved in a vehicular collision. Essentially, persons associated with certain towing and auto repair agencies have been circumventing the intent of By-law No. 02-362, which prohibits soliciting for towing and/or repair services in proximity to accident scenes, by laying in wait near Collision Reporting Centres (CRC) and presenting their services, in a manner bordering on coercion, to persons attending the CRC to report accidents in which they were involved.

Further, this report and the associated by-law, if enacted, rectifies certain perceived deficiencies attendant to By-law No. 02-362 in its present form, which came to light during the appeal of a conviction obtained under said by-law and, coincidentally, resolves inconsistencies that currently exist between By-law No. 02-362 and the Municipal Act, 2001, as amended.

BACKGROUND:

At its meeting on November 27, 2002, Council enacted City of Hamilton By-law No. 02-362¹, as attached to Report PD02234, known as the "Anti-Solicitation By-law to Prevent Accident Scene Solicitation".

By-law No. 02-362 repealed Schedule 28 of the City of Hamilton Licensing By-law No. 01-156, respecting the licensing of tow trucks by the City, and prohibited persons associated with towing and/or auto repair agencies from soliciting business in close proximity to accident scenes. The subject prohibition was intended to deal with what are commonly referred to as "Chasers", those being persons associated with certain towing and auto repair agencies who would appear at accident scenes, often before the Police arrived, and who would try to convince the persons involved in the collision to contract with the agencies the Chaser represented for towing and/or repair services.

The issue revolves around the fact that a person recently involved in a collision may not be in the best frame of mind to make contractual decisions and, therefore, should not be subjected to undue pressure to enter into an agreement respecting the towing and/or repair of their vehicle until they have been fully apprised of all their options by an unbiased third party and until they have had an opportunity to come to terms with their circumstance at an emotional level.

Unfortunately, the existing by-law only deals with this issue in proximity to the accident scene itself, which allowed the aforementioned Chasers to continue pursuing their trade by the simple expedient of relocating to the vicinity of the Collision Reporting Centres. Consequently the Hamilton Police Service and HARA requests that regulations be enacted to prohibit "Chasers from attending any Police Stations in Hamilton where Collision Reporting Centres are located"². It is the opinion of the Police Service that Chasers are "circumventing the Collision Reporting system by harassing the drivers into using services of one specific repair facility and making them believe they have no other

¹ See Item 4 of the Hearings Subcommittee Report 02-040

² E-mail, Inspector R. W. Wills, October 10, 2006, Re: Accident Scene Non-Solicitation By-law

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choice prior to attending the CRC where the insurance industry options are made available to the driver”³. In short, the Police Service is of the opinion that prohibiting Chasers and their type from awaiting their prey in the immediate vicinity of a CRC would “provide the community with a fair and positive manner to report motor vehicle collisions”⁴ in an atmosphere free of undue pressure.

It should be noted that towing agencies engaging the services of these so-called Chasers and employing similar tactics are agencies that have no contractual affiliation with the Hamilton Police Service. While the actions of agencies that are under contract with the Police Service can be regulated by the terms and conditions set out in the contract, the activities of towing agencies that are not under contract with the Police Service cannot be regulated except by the provisions of a municipal by-law.

As a further complication, on August 15, 2006, His Honour, Justice Anton Zuraw, when hearing an appeal respecting a charge laid under By-law No. 02-362, ruled that Section 2 of the subject by-law was “over broad” and, on that basis, overturned the conviction.

His Honour’s concern was based upon his perception that one might interpret Section 2 of the by-law such that it might seem to prohibit a person operating an auto repair facility from continuing to conduct their business should a motor vehicle collision coincidentally occur within 200 metres of their establishment, until such time as the accident scene was cleared. Specifically, His Honour opined; “the municipality has the power to prevent the type of business that was carried on⁵, on the day in question. I think the by-law they are using is over broad and not one that I would enforce”⁶.

ANALYSIS/RATIONALE:

The recommendations and the proposed by-law address the concerns expressed by the Hamilton Police Service and HARA since they provide for the regulation of the unauthorised solicitation in proximity to both accident scenes and Collision Reporting Centres. The recommendations and the proposed by-law also address the issue raised by His Honour, Justice Zuraw, in that By-law No. 02-362 would be repealed and the scope of the regulation replacing Section 2 of By-law No. 02-362 has been sufficiently narrowed, in the opinion of the Senior Solicitor having carriage of this matter, as to preclude any further overly liberal interpretation of the prohibition.

In so far as the City’s authority to enact such a by-law is concerned, Section 10 of the Municipal Act 2001, as amended, specifically grants to municipalities the authority to provide “any service or thing that the municipality considers necessary or desirable for the public” and, more specifically, Paragraph 5 thereof provides for the “economic, social and environmental well-being of the municipality”, Paragraph 6 thereof provides for the “health, safety and well-being of persons” and Paragraph 8 thereof provides for “protection of persons and property, **including consumer protection**”.

³ Ibid

⁴ Ibid

⁵ Referring to Chasers

⁶ Transcript, Anton Zuraw J. Presiding,

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Further, with respect to the removal of a Tow Truck parking or standing contrary to recommendation (j), above, Section 170(15) of the Highway Traffic Act, stipulates that police officers and municipal law enforcement officers, upon discovery of “any vehicle parked or standing in contravention of a municipal by-law, may cause it to be moved or taken to and placed or stored in a suitable place and all costs and charges for the removal, care and storage of the vehicle, if any, are a lien upon the vehicle, which may be enforced in the manner provided by the Repair and Storage Liens Act. In a situation such as this, the officer would make a reasonable effort to have the Chaser Tow Truck operator remove his vehicle from the location of the accident scene or the Collision Reporting Centre, rendering the towing and impounding a Tow Truck as the option of last resort. It is also staff’s intention to submit an application for “Set Fines” pursuant to Part I of the Provincial Offences Act and, thus, provide Police and Municipal Law Enforcement Officers with a third, less onerous enforcement option and the opportunity to impose reduced penalties in cases where the maximum penalties are deemed inappropriate to the circumstances.

ALTERNATIVES FOR CONSIDERATION:

The Committee and Council could agree that By-law No. 02-362 might remain in effect as it currently reads. This alternative, in staff’s view, would fail to address the concerns of the Hamilton Police Service and HARA and, given His Honour’s ruling respecting Section 2 of the existing by-law, undermine enforcement of Council’s original intent.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial Implications

None

Staffing Implications

None

Legal Implications

It is staff’s opinion that approval of the recommendations and enactment of the proposed by-law will provide for more effective implementation and enforcement of Council’s original intent by virtue of the fact that Justice Zuraw’s concerns respecting Section 2 of the existing by-law will be resolved and the concerns expressed by the Hamilton Police Service and the Hamilton District Auto-body Repair Association will be dealt with in a satisfactory manner. Accordingly, other than the passing of the proposed by-law, no other legal implications apply.

POLICIES AFFECTING PROPOSAL:

The subject recommendations are consistent with the City’s “Values” in that they speak to “Integrity” by demonstrating “honesty and sincerity in all of our dealings”, and by

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upholding “only the highest ethical principles”, and providing “open and transparent communications to create informed opinion”. The subject recommendations are also consistent with the City’s “Goal” respecting a “City that works” in terms of “Best Practices and Best Value” in that they recognize “accountability, service quality, accessibility and other community priorities”.

RELEVANT CONSULTATION:

Representatives of the Hamilton Police Service were extensively consulted and support the recommendations and the proposed by-law. Representatives of the Hamilton District Auto-body Repair Association were also consulted and concur with the subject recommendations and the proposed by-law.

CITY STRATEGIC COMMITMENT:

By evaluating the “**Triple Bottom Line**”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. Yes No

Members of the community involved in a motor vehicle collision will be provided with a fair and positive process by which motor vehicle collisions may be reported, free from coercion and/or harassment.

Environmental Well-Being is enhanced. Yes No

Economic Well-Being is enhanced. Yes No

Economic well-being is enhanced in that the recommendations and proposed by-law contribute to a “levelling of the playing field” respecting the automobile repair industry as it operates in the City of Hamilton by ensuring that prospective clients are provided accurate and unbiased information, thereby enabling them to make informed and meaningful decisions as to the services they require.

Does the option you are recommending create value across all three bottom lines?
 Yes No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? Yes No

The recommendations better equip officers of the Hamilton Police Service with the legislative tools necessary to enhance job performance.

PDB/MBH/kag
Attach. (1)

- c.c. J. Norris, Hamilton District Autobody Repair Association
- V. DeMascio, Hamilton Police Service
- A. Kirkwood, Hamilton Police Service
- R. Wills, Hamilton Police Service

To Repeal and Replace By-Law No. 02-362,
A By-law to Prohibit Accident Scene Solicitation on Highways

Authority: Item , Committee of the Whole
Report (Staff report number)
CM: Date

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

**To Repeal and Replace By-Law No. 02-362, A By-law to Prohibit Accident Scene
Solicitation on Highways**

WHEREAS this By-law is enacted for the purposes of protecting the health and safety of all those involved in vehicle accidents, including emergency personnel, by keeping highways free of obstructions or other impediments in and around accident scenes; controlling the nuisance for all those using highways caused by obstructions or impediments in and around accident scenes; and, protecting consumers who are involved in vehicle accidents;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5 through 8 of subsection 10(2) authorize by-laws respecting: the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the provision of any service or thing that it considers necessary or desirable for the public; and the protection of persons and property, including consumer protection;

AND WHEREAS subsection 101(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to 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 this By-law and provides that subsection 170(15) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, applies;

AND WHEREAS section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that any person who contravenes any by-law of the City of Hamilton is guilty of an offence;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. In this By-law:
 - (a) "business" means a business as defined in section 150 of the *Municipal Act, 2001*;
 - (b) "City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;

To Repeal and Replace By-Law No. 02-362,
A By-law to Prohibit Accident Scene Solicitation on Highways

- (c) “collision reporting centre” means a facility specified by a police service where a vehicle which has been involved in an accident may be taken and stored for the purpose of reporting such accident;
 - (d) “Council” means the council of the City of Hamilton;
 - (e) “emergency personnel” means the operator, driver, attendant, or other personnel of an ambulance, a fire department vehicle, a police service vehicle, public utility vehicle, a Ministry of Ontario emergency vehicle, or a vehicle operated by an officer appointed to carry out provisions of the *Highway Traffic Act*, the *Public Vehicles Act*, or the *Environmental Protection Act* while the officer is in the course of his or her employment;
 - (f) “highway” means a highway as defined in subsection 1(1) of the *Municipal Act, 2001* and as provided for in section 26 of the *Municipal Act, 2001*, but does not include a King’s Highway as defined in subsection 1(1) of the *Highway Traffic Act*;
 - (g) “motor vehicle” means a motor vehicle as defined in subsection 1(1) of the *Highway Traffic Act*;
 - (h) “tow truck” means a motor vehicle which is designed, modified or used for pulling, towing, carrying, or lifting other motor vehicles, be they damaged, disabled, abandoned, or otherwise, with or without the assistance or use of lifts, winches, dollies, trailers, or similar equipment;
 - (i) “towing services” means the provision or use of a tow truck including the assistance of the owner, operator, driver, or any passenger of a vehicle through the use of the equipment on or used in conjunction with the tow truck for the pulling, towing, carrying, or lifting of a motor vehicle at a place located within the City; and,
 - (j) “vehicle” means a vehicle as defined in subsection 1(1) of the *Highway Traffic Act*.
2. No person shall solicit or make or convey an offer of business services or goods to the driver or any other person involved in a vehicle accident or apparent accident while the person soliciting or making or conveying the offer of business services or goods is within 200 metres of,
- (a) the scene of the vehicle accident or apparent accident; or,
 - (b) a vehicle involved in the accident,
- on a highway.
3. No person shall solicit or make or convey an offer of business services or goods to anyone going to or from or attending at a collision reporting centre to report a vehicle accident or apparent accident while the person soliciting or making or conveying the

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offer of business services or goods is within 200 metres of the premises of the collision reporting centre.

4. No person shall solicit the hiring of a tow truck or make or convey an offer of towing services while that person is within 200 metres of,
 - (a) the scene of a vehicle accident or apparent accident; or,
 - (b) a vehicle involved in an accident,on a highway.
5. No person shall solicit the hiring of a tow truck or make or convey an offer of towing services to anyone going to or from or attending at a collision reporting centre to report a vehicle accident or apparent accident while the person soliciting or making or conveying the offer of towing services is within 200 metres of the premises of the collision reporting centre.
6. No person shall park, stop, or stand a tow truck on a highway within 200 metres of,
 - (a) the scene of a vehicle accident or apparent accident; or,
 - (b) a vehicle involved in an accident.
7. Section 2 of this By-law does not apply to business services or goods where the person is within 200 metres of the scene of an accident or a vehicle involved in an accident at the request of emergency personnel, a person engaged in highway maintenance, or a person involved in the accident.
8. Section 3 of this By-law does not apply to business services or goods where the person is within 200 metres of a collision reporting centre at the request of emergency personnel, a person engaged in highway maintenance, or a person reporting the accident.
9. Sections 4 and 6 of this By-law do not apply to a person who is within 200 metres of the scene of an accident or a vehicle involved in accident at the request of emergency personnel, a person engaged in highway maintenance, or a person involved in the accident.
10. Section 5 of this By-law does not apply to a person who is within 200 metres of a collision reporting centre at the request of emergency personnel, a person engaged in highway maintenance, or a person reporting the accident.

Offence

11. Every person who fails to comply with this By-law is, upon conviction, guilty of an offence and is liable to a fine of not more than:
 - (a) \$5,000 for a first offence;

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- (b) \$25,000 for a second offence; or
- (c) \$100,000 for a third or subsequent offence.

Power to remove vehicle

- 12. A police officer or a municipal law enforcement officer, upon discovery of any tow truck parked or standing in contravention of this By-law, may cause the tow truck to be moved or taken to and placed or stored in a suitable place and all costs and charges for the removal, care and storage of the tow truck, if any, are a lien upon the tow truck, which may be enforced in the manner provided by the *Repair and Storage Liens Act*.

Validity

- 13. If a court of competent jurisdiction declares any subsection, section or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

Title

- 14. This By-law may be referred to as the "Hamilton Highway Accident Non-Solicitation By-law".

Repeal

- 15. By-law No. 02-362 is hereby repealed.

PASSED and ENACTED this day of , 200 .

MAYOR

CLERK