SUBJECT: Licensing of Tow Trucks (PED09019(a)) (City Wide)

RECOMMENDATION:

a) That staff be directed to undertake a comprehensive investigation including stakeholder consultation and report back to the Economic Development and Planning Committee respecting the necessity and financial viability of licensing tow trucks and other roadside service providers in the City of Hamilton (City).

b) That stakeholder consultation associated with investigating the necessity and financial viability of licensing tow trucks and other roadside service providers include:

- staff arranged meetings with the Hamilton Police Service, the Collision Repair Trade Association, the Provincial Towing Association of Ontario, the Canadian Automobile Association, the Insurance Industry and individual local owners/operators; and

- publicizing through advertisements in the Hamilton Spectator, the Brabant Publications and on the City’s web site, that the City is accepting public written submissions respecting the need to license tow trucks and other roadside service providers in the City of Hamilton.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

The Economic Development and Planning Committee, on November 22, 2007, directed staff to investigate if the City should license tow trucks to prevent tow truck operators from taking vehicles to repair businesses outside of Hamilton.

In Report PED09019 staff recommended that no action be taken with respect to establishing a tow truck licensing program.

At the January 20, 2009 meeting, the Committee referred the matter back to staff “for a report on a process to undertake a thorough and comprehensive review of the tow truck industry”. This report provides an update on that directive and recommends that staff be directed to undertake a comprehensive investigation including stakeholder consultation and report back to the Economic Development and Planning Committee respecting the necessity and financial viability of licensing tow trucks and to include in the scope of the review other roadside service providers such as tire repair and battery assistance services.

BACKGROUND:

At the Economic Development and Planning Committee meeting of November 27, 2007, staff was directed to investigate and report back on a suggestion that the City license tow trucks to prevent tow truck operators from taking vehicles to repair businesses outside the City, requiring them instead to take vehicles to repair businesses in Hamilton.

Staff reported back in Report PED09019 and recommended that no action be taken with respect to establishing a Tow Truck Licensing Program in the City because:

- the Courts have indicated that economic objectives may not be valid municipal purposes, and that a by-law passed with the primary objective of conferring a competitive advantage in relation to private enterprise would not likely survive a legal challenge; and

- staff felt it prudent to await the disposition of the Private Member’s Public Bill, entitled the Towing Industry Act, 2008, being considered by the Provincial legislature which provides for self-regulation of the industry.

The Committee considered the recommendation to not establish a tow truck licensing program at its January 20, 2009 meeting and referred the matter back to staff “for a report on a process to undertake a thorough and comprehensive review of the tow truck industry”.

ANALYSIS/RATIONALE:
Currently, the City does not regulate the tow truck industry, except to prohibit anyone from soliciting for towing and/or repair services within 200 metres of accident scenes or collision repair centres.

From 1992 through to 2002, Hamilton licensed tow trucks primarily to control “chasers“ and aggressive solicitation by tow truck and auto body repair operators at motor vehicle accident scenes. However, with the adoption of the “Anti-Solicitation By-Law to Prevent Accident Scene Solicitation” in 2002 the City’s Tow Truck Licensing requirement was dropped as it was felt that the anti-solicitation by-law more effectively addressed concerns respecting solicitation at accident scenes, and in response to industry concerns that about duplication in meeting the City’s licensing requirements and the eligibility requirements for qualifying for the Hamilton Police towing contract. Enforcement of the “Anti-Solicitation By-Law to Prevent Accident Scene Solicitation” was to be a joint Hamilton Police Services (Police) and Municipal Law Enforcement operation.

On reporting to the Economic Development and Planning Committee in early 2009, staff felt it prudent to await the disposition of the Private Member’s Public Bill, entitled the Towing Industry Act, 2008 which, if approved, would create a self-regulating body for the towing industry called the Towing Industry Council of Ontario to administer a Province wide registration system and to otherwise regulate the towing industry. However, staff is advised that the Bill is still at the Standing Committee on General Government, and that no meeting notice has been issued.

Staff has again discussed the matter at length with Senior Management of the Hamilton Police Service. To-date, the Police advise that no charges have been laid under the “Anti-Solicitation By-Law to Prevent Accident Scene Solicitation“, and it is concluded that it is difficult to align the Police/Municipal Law Enforcement priorities to arrange for joint enforcement.

In view of the above, staff concur that there is merit on undertaking a process to conduct a thorough and comprehensive review of the tow truck industry to determine the necessity and financial viability of a licensing program. Further, staff recommend that all roadside services (e.g. tire repair and battery service) be considered in the review as there is a valid municipal purpose to look at the issues around consumer protection and public safety while the operator of a disabled vehicle or damaged vehicle is confined or isolated from a broader choice of service providers.

**ALTERNATIVES FOR CONSIDERATION:**

- not consult with the public/stakeholders and proceed to develop a tow truck licensing program or could decide to not license tow trucks.

- not include all roadside service providers in the review.

- await disposition of Towing Industry Act, 2008 Bill to ensure no duplication of efforts/requirements.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**
Financial Implications

In 2002, when the tow truck licensing requirement was dropped, license fee revenues were estimated at $27,000. Significant investigation/consultation is required to determine if a tow truck/roadside service licensing program could be self-financing.

Staffing Implications

The investigation/consultation required to determine the necessity and viability of a tow truck/roadside service licensing program under current conditions can be accommodated within budget and with current staff. However, any new licensing program would require additional staff or a reallocation of existing staff resources.

Legal Implications

Until 1 January 2007, the Municipal Act, 2001 provided that business licensing powers be exercised for the purposes of (1) health and safety, (2) nuisance control and/or (3) consumer protection. Although this provision has been removed, one of these, or a similar valid municipal purpose, would be required when a municipality exercises its regulatory powers in regard to businesses.

Therefore, if the City were to regulate tow trucks, it could do so under a licensing program on the basis of a valid municipal by-law. Several municipalities have by-laws regulating tow truck rates to a greater or lesser degree (e.g. Mississauga, Brampton, Caledon and Markham).

Policies Affecting Proposal:  

N/A

Relevant Consultation:

Legal Services and the Hamilton Police Service have been consulted in the preparation of this report. Staff proposes to consult with the public/stakeholders to determine which, if any, aspects of the industry should be regulated and if such a program could be self-sustaining without any negative impact on the City’s general levy.

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

N/A
SUBJECT: Licensing of Tow Trucks (PED09019(a)) (City Wide) - Page 5 of 5

Environmental Well-Being is enhanced.  ☐ Yes  ☒ No

N/A

Economic Well-Being is enhanced.  ☐ Yes  ☒ No

N/A

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

MBH/dt