TO: Chair and Members Planning Committee
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: November 8, 2011

SUBJECT/REPORT NO: Tow Truck Licensing (PED09019(c)) (City Wide) (Outstanding Business List Item)

SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department

PREPARED BY: Bill Young 905-546-2424 Ext. 2469
Glyn Wide 905-546-2424 Ext. 5413

SIGNATURE:

RECOMMENDATION

a) That staff be directed to prepare a comprehensive by-law amendment to the City's Licensing By-Law 07-170 to include provisions for the licensing of tow trucks and tow truck drivers;

b) That recommendation a) above be subject to the approval of an additional 0.60 FTE (on a full cost recovery basis) for enforcement and administrative support to the licensing of tow trucks and tow truck drivers: and,

c) That roadside assistance providers not be included as a licensing category.

EXECUTIVE SUMMARY

In 2007, staff were directed to investigate if the City should license tow trucks. Subsequently, Council approved a staff suggestion to also include roadside service providers in the review.
Staff have undertaken a comprehensive investigation including stakeholder consultation and conclude that there is a valid public interest to requiring that tow trucks and tow truck drivers be licensed. Staff recommend that the licensing of tow trucks and tow truck drivers be endorsed, subject to the approval of an additional 0.60 FTE for enforcement and administrative support, before undertaking to prepare the necessary by-law amendments. Further, staff recommend no action with respect to licensing roadside assistance providers.

**Alternatives for Consideration - N/A**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial/Staffing:** An additional 0.60 FTE is required for enforcement and administrative support to the licensing of tow trucks and tow truck drivers. Staff estimates that there are approximately 100 tow trucks in Hamilton. The licensing program could be full cost recovery with an annual license fee of $350.00 per vehicle licence and $90.00 for each tow truck driver.

The recommended fees are in line with taxi plate renewal and City issued operator licences. Taxi drivers pay an annual fee of $75.00 while taxi plate renewals cost $461.00 per year after the initial issuance costs of $3,770.00. The recommended annual tow truck license fee is slightly lower as less work would be involved.

**Legal:** N/A

**HISTORICAL BACKGROUND (Chronology of events)**

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

Staff reported back on January 20, 2009 recommending no action be taken with respect to establishing a tow truck licensing program because, while municipal by-laws may be passed for valid municipal purposes, 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. 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”.

On January 19, 2010, the former Economic Development and Planning Committee dealt with Report PED09019(a) and approved the following:
“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 Services (HPS), the Collision Repair Trade Association, the Provincial Towing Association of Ontario, Canadian Automobile Association, local tow truck manufacturing businesses, the Insurance Industry and individual local tow truck 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.”

Staff informed the Planning Committee on September 21, 2010 that a Report would not be available until the 2nd quarter of 2011 as additional work was required to address the large divide on stakeholder opinion about the need for licensing and the concern that licensing requirements would be redundant for those that provide service to the Hamilton Police Services because they are already audited heavily by the HPS.

### POLICY IMPLICATIONS

N/A

### RELEVANT CONSULTATION

Legal Services and the HPS were consulted in the preparation of this Report. Staff conducted public meetings on May 19th 2010 at the Riverdale Recreation Centre and on May 26th 2010 at Michaelangelos Banquet Centre. Both sessions were attended by representatives of the Canadian Automobile Association, police-contracted tow operators, independent tow truck owners/drivers and local auto body shops. As directed, staff also consulted with the Provincial Towing Association of Ontario.
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 (see By-Law 08-174).²

From 1992 through to 2002, Hamilton licensed tow trucks primarily to control "chasers" and aggressive solicitation by tow truck drivers 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 repealed as it was felt that the anti-solicitation by-law more effectively addressed concerns respecting solicitation at accident scenes.

Enforcement of the “Anti-Solicitation By-Law to Prevent Accident Scene Solicitation” was to be a joint effort by the Hamilton Police Service (HPS) and Municipal Law Enforcement. However, to-date, the Police advise that no charges have been laid under this by-law, and it is concluded that it is too difficult to align HPS and Municipal Law Enforcement priorities to arrange for joint enforcement.

On reporting to the former Economic Development and Planning Committee in early 2009, staff felt it prudent to await the disposition of the Private Member’s Bill 87, 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 proposed legislation has died on the legislative table.

There are no regulations that apply to the towing industry in general in Hamilton. While the HPS approve, through a tender process, tow truck owners who are used for Police Security Towing this does not apply to all tow truck owners in Hamilton.

Staff conclude that there are valid municipal purposes to require that tow trucks and tow truck drivers be licensed by the Municipality, as follows:

**Consumer Protection:** In terms of consumer protection, there is currently no municipal complaint process for dealing with allegations of unscrupulous drivers. There have been many reports of persons feeling that they were taken advantage of and intimidated during a time of confusion and crisis (at a motor vehicle collision).

**Public Safety:** Concerns regarding personal safety have been expressed when stranded consumers are approached by unknown individuals and in isolated locations at all hours, and in some cases by an unmarked or poorly marked tow truck. Further,
there are no vehicle standards for tow trucks or equipment and no driver's licence abstracts or criminal record history checks for tow truck drivers.

**Nuisance Control:** Complaints have been received from the motoring public when their vehicles have been towed to unregulated compounds. Without knowing who towed their vehicle and where it is being stored, the Police are receiving calls regarding location of towed vehicles. In addition, some tow truck drivers are not following the “Anti-Solicitation By-law”.

Staff recommends that the principle of creating a Tow Truck Licensing category be endorsed, such that staff can undertake to prepare the necessary by-law amendments for Committee and Council consideration. The general basis of a tow truck licensing category would be as follows:

- each tow truck and tow truck driver would be licensed;
- an annual inspection of vehicle and equipment, providing a copy of the annual Safety Standards Certificate is submitted;
- a complaint process for the public;
- the use of “show cause” hearings of the Licensing Tribunal to address non-compliance issues;
- requiring vehicles to be identified with legible markings posted on each side of the tow truck including a Municipal Tow Truck Operator license plate;
- tariffs (rate card) requirements;
- requirements for written estimates;
- requirements for identifying the location of storage yard;
- requirements for identifying name and contact number of owner; and,
- requirements tow truck owners to manage their employees.

Staff have reviewed the concerns of the tow truck industry relating to the duplication of requirements for owners approved for the HPS security tow list and it is staffs intention to streamline the license application to allow for the Safety Standards Certificate to be used for the mobile tow truck owner licence. Not all tow truck owners apply for, or perform security tows, for the Police, as it is an individual tow truck owner’s business decision to meet all requirements. There is no additional cost associated with the security tow process that is duplicated in a licensing process, they are two separate processes and serve separate functions. This is similar to how licensing trade contractors who also apply to tenders put out by the City.

With respect to licensing roadside service providers, (i.e. battery boosting, tire repairs, ceased doors and locks, etc.) staff concludes that most of these operations are associated in some way with tow truck operations or an existing public garage licence, and therefore, a separate license category would not be required.
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<th>ALTERNATIVES FOR CONSIDERATION</th>
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<tr>
<th>CORPORATE STRATEGIC PLAN</th>
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- **Healthy Community** – Public Safety is protected.
- **Growing our Economy** – Support and protection of the motoring public.

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