

By-law 2015-232

A By-law of the City of Greater Sudbury for the Licensing, Regulating and Governing of Private Property Parking Control Officers in the City of Greater Sudbury

Whereas section 15 of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended confers the power for a municipal council to appoint persons to enforce the by-laws of the municipality;

And Whereas section 23 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "*Municipal Act 2001*") confers the power to a municipal council to delegate its authority to an officer or employee of the municipality, including the power to issue licenses;

And Whereas section 151 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "*Municipal Act 2001*") confers the power to a municipality to pass by-laws to create a system of licensing;

And Whereas the Council of the City of Greater Sudbury deems it desirable to provide a system for the licensing, regulation and governing private property parking control officers in the City of Greater Sudbury;

Now therefore the Council of the City of Greater Sudbury hereby enacts as follows:

Part 1 - Terminology / General

Terminology

1. For the purposes of this By-law:

"By-law" means this By-law as it may be amended from time to time and includes the recitals as an integral part;

"City" means the municipal corporation of the City of Greater Sudbury or the geographic area of the City of Greater Sudbury as the context requires;

"Council" means the Council of the City of Greater Sudbury;

"Hearing Committee" means the Hearing Committee authorized pursuant to the City's Procedure By-law, as amended or replaced from time to time;

“Inspection” or “Inspect” includes without limitation a physical, visual or other examination, includes any form of test or inquiry and includes the right to enter a building or onto land to conduct the inspection and also includes the right to take photographs, including digital images and to make copies of documents;

“Investigation” or “Investigate” includes the right to make enquiries, conduct an Inspection regarding any aspect of a Private Property Parking Control Officer, its operation, an application for or renewal of a License or any other matter related to this By-law;

“License” means a current and valid license issued or renewed under the authority of this By-law;

“License Issuer” means the Manager of Security, By-law and Court Services and includes his or her authorized designate;

“Licensee” means an individual who holds a License;

“Municipal Law Enforcement Officer” includes any Person appointed by Council by By-law as a municipal by-law enforcement officer for the enforcement of the City’s by-laws and also includes a duly sworn member of the Greater Sudbury Police Service, but does not include a Licensee;

“Owner” means a Person who is the registered owner of a Private Property and includes a receiver or manager, or a mortgagee in possession, a beneficial owner of the land or other similar Person;

“Parking Enforcement” means the activity of enforcing municipal parking by-laws and regulations, including the issuance of a certificate of parking infraction and parking infraction notices under Part II of the *Provincial Offences Act*, R.S.O. 1990, c.P.33;

“Person” includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust and a corporation;

“Private Property” means any real property or premises in the City which is privately owned and which is not owned or occupied by the City;

“Revocation” means the recalling and voiding of a License previously issued under this Bylaw and “Revoke” and “Revoked” have similar meaning as required by the context;

“Signage” means signage of a type required under the Traffic and Parking By-law for parking on Private Property;

"Suspension" means the temporary discontinuance of a License previously issued under this By-law and "suspend" and "suspended" have similar meaning as required by the context;

"Traffic and Parking By-law" means the City's By-law 2010-01 being a By-law to Regulate Traffic and Parking in the City of Greater Sudbury, as amended or replaced from time to time; and

"User Fee By-law" means the City's By-law to Establish Miscellaneous User Fees for Services Provided by the City of Greater Sudbury, as amended or replaced from time to time.

Interpretation

2.-(1) Whenever this By-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.

(2) References to items in the plural include the singular, as applicable.

(3) The words "include", "including" and "includes" are not to be read as limiting the phrases or descriptions that precede them. Any examples provided are intended to be representative examples and not intended to be an exhaustive list.

(4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.

(5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended, restated or replaced from time to time.

(6) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first Business Day after a Sunday or Statutory holiday if the expiration of the time period occurs on a Sunday or Statutory holiday.

(7) The obligations imposed by this By-law are in addition to obligations otherwise imposed by law or contract.

(8) Where this By-law provides metric and imperial units of measure, the metric unit of measure shall prevail. For convenience only, approximate imperial measurements have been provided in parentheses but are of no force or effect. The abbreviation "mm" stands for millimetres and "m" stands for metres.

(9) Terms with capitals shall be read with the meaning in section 1, and other words shall be given their ordinary meaning.

Severability / Conflict

3.-(1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other by-law of the City.

(3) Where a provision of this By-law conflicts with the provisions of another by-law in force in the City, or any of the provisions of any federal or provincial states or regulation, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Application

4.-(1) This By-law shall apply to Parking Enforcement on Private Property within the geographic limits of the City.

Administration / Delegation

5.-(1) The administration of this By-law is assigned to the License Issuer who is delegated the authority to:

- (a) make all decisions required of the License Issuer under this By-law;
- (b) perform all administrative functions, conduct all Inspections or Investigations referred to herein and those incidental to and necessary for the due administration and implementation of this By-law; and
- (c) establish and amend from time to time, such forms, documents, and such standards, protocols, procedures and training as the License Issuer may determine are required to implement and administer this Bylaw.

(2) The License Issuer may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may Revoke any such delegation. The License Issuer may continue to exercise any function delegated during the delegation.

(3) Unless specifically provided to the contrary in this By-law, the decisions of the License Issuer are final and not subject to appeal.

Appointment as Municipal By-law Enforcement Officer

6.-(1) Every Licensee is appointed as a municipal by-law enforcement officer pursuant to section 15 of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, during the term of his or her License or until it is Suspended or Revoked, for the purposes of enforcing the following provisions of the City's Traffic and Parking By-law:

- (a) sections 34, 39(a) and 40(a); and
- (b) section 46;

inclusive for the locations specified.

(2) Every appointment under subsection 6(1) shall expire without further action by the City upon the expiry or Revocation of a License.

(3) Every appointment under subsection 6(1) shall be suspended without further action by the City upon a Suspension of the Licensee's License.

Part 2 - Licenses Required

License Required to Operate

7.-(1) No Person shall engage in Parking Enforcement on Private Property except:

- (a) a Municipal Law Enforcement Officer who is authorized to do so;
- (b) a Licensee whose License authorizes Parking Enforcement on that Private Property.

(2) No owner of Private Property shall authorize or permit a Person to engage in Parking Enforcement on his or her Private Property unless such Person is a Licensee and is authorized under his or her License to engage in Parking Enforcement on that property.

Part 3 - License Applications, Etc.

Application for License / Renewal of License

8. Every applicant for a License or renewal of a License under this By-law shall file with the License Issuer:

- (a) an application in the form established by the License Issuer from time to time, bearing the signature of the applicant, certifying the accuracy of the information provided;
- (b) evidence of the applicant's date of birth;
- (c) all applicable fees determined in accordance with the City's User Fee By-law;
- (d) submit for examination only one of the following original documents;
 - (i) a criminal record check dated within thirty (90) days of the date the application is submitted;
 - (ii) a valid Security Guard license, issued under the *Private Security and Investigative Services Act, 2005*, 20 2005, c 34; or
 - (iii) a valid Private Investigator license, issued under *Private Security and Investigative Services Act, 2005*, 20 2005, d 34.
- (e) a certified copy of a current certificate of insurance, demonstrating comprehensive general liability insurance on an occurrence basis for an amount not less than two million (\$2,000,000) dollars completed by
 - (i) the applicant's insurer; or
 - (ii) where the applicant is an employee of a corporation or partnership which extends insurance coverage to the applicant, completed by the applicant's employer, evidencing the coverage will extend to the applicant while employed and Licensed;
- (f) information regarding the municipal address of each Private Property at which the applicant is applying to provide Parking Enforcement;
- (g) for each Private Property identified in paragraph 8(f), either:
 - (i) evidence that the applicant is the Owner of the Private Property; or
 - (ii) written consent to the applicant providing Parking Enforcement at his or her Private Property, from each Owner of the Private Property;
- (h) the applicant's consent pursuant the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, c. 32 as amended or replaced,

to the disclosure to the City by any law enforcement agency, provincial ministry, federal department, agency, board or commission thereof of such records and personal information as the License Issuer may determine is required for the purposes of any Investigation to assist in determining if it is in order to issue a License or renewal of a License; and

- (i) where the applicant intends to engage in Parking Enforcement as an employee of a corporation or partnership, the name of the employer and proof that the employer has authorized the application.

9.-(1) Upon receipt of a complete application for a new License the License Issuer shall:

- (a) conduct an Inspection of Signage on each Private Property identified in the application for compliance with the requirements of the City's Traffic and Parking By-law;
- (b) schedule the applicant to attend the City's Parking Enforcement training course for Licensees; and
- (c) engage in such Investigations as the License Issuer deems to be appropriate in the circumstances to determine compliance with the requirements of this By-law or otherwise determine entitlement to a License or renewal of a License.

(2) Despite subsection 9(1), the License Issuer may dispense with the requirements:

- (a) in paragraph 9(1)(a) provided that in the circumstances, the License Issuer is satisfied the Signage on the Private Property is in compliance with the Traffic and Parking By-law by means other than an Inspection; or
- (b) in paragraph 9(1)(b) provided that the License Issuer is satisfied in the circumstances that the applicant has demonstrated a clear understanding of the content of the City's training course for Licensees.

(3) Every applicant for a License or renewal of a License shall:

- (a) co-operate with the License Issuer to arrange for and facilitate the conduct of the Inspection and any Investigation;
- (b) attend and successfully complete the City's training course for Parking Enforcement, if scheduled to do so by the License Issuer; and

- (c) permit the License Issuer to record a photograph of the applicant for display on the License.

(4) Any application which is not considered within thirty (30) days of submission, on the basis that is not complete, shall be deemed to be rejected, and any application fee which was submitted shall be returned to the applicant. No fee submitted as a part of the application shall otherwise be returned or refunded to the application.

Refuse to Issue or Renew

10.-(1) The License Issuer shall refuse to issue a License or to renew a License under this By-law if:

- (a) in the opinion of the License Issuer, the past conduct of the applicant for a License or renewal of a License, provides reasonable grounds for belief that:
 - (i) the applicant has not carried on or will not carry on, the trade, business or occupation for which the License is sought in accordance with law and with integrity and honesty; or
 - (ii) the carrying of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this By-law or any other municipal by-law, federal or provincial statute or regulation there under;
- (b) a criminal record check submitted as part of the application reveals that Person to whom the criminal record check relates had, in the five (5) years prior to the date of the application, a conviction by indictment for any offence under the *Criminal Code*, R.S.C. 1985, C-46, or under any other federal statutes and without limiting the generality of the foregoing, under the *Controlled Drugs and Substances Act*, S.C. 1996, Chapter 19 and the *Food and Drugs Act*, R.S.C. 1985, C. F-27;
- (c) the applicant failed to comply with subsection 9(3);
- (d) the applicant is under the age of 18; or
- (e) there is any other reason which the License Issuer considers to be sufficient reason to refuse to issue or to refuse to renew a License.

Notice of Refusal to Issue or Renew

11.-(1) Where the License Issuer determines that a License should not be issued or renewed the License Issuer shall give notice to the applicant for the License or renewal of a License of:

- (a) the decision and particulars of the reason for the refusal to issue or renew the License; and
- (b) any right to request a hearing before the Hearing Committee, the process to do so, and the time limitation for submitting the request.

(2) The applicant for a License or the renewal of a License may appeal to the Hearing Committee a refusal to issue or renew a License where such refusal is based on the exercise of the License Issuer's discretion under paragraph 10(a) or 10(e).

(3) The decision of the License Issuer to refuse to issue or renew a License shall be final:

- (a) if there is no right of appeal under subsection 11(2); or
- (b) no appeal by way of request for a hearing is filed with the License Issuer in accordance with this By-law.

Part 4 - License Issuance / Replacement / Re-Issuance / Expiry

Issuance of License

12.-(1) The License Issuer is authorized to issue a License in a form determined by the License Issuer, provided the applicant for a License or renewal of a License has complied with the requirements of this By-law, the License Issuer is satisfied that the Private Property at which the Parking Enforcement is to occur is compliant with the requirements of the City's Traffic and Parking Bylaw, and the issuance or renewal of the License is not otherwise prohibited under this By-law.

(2) The License Issuer shall show on the face of a License:

- (a) a photograph of the Licensee;
- (b) the effective date of the License;
- (c) the date on which the License will expire if not earlier terminated, or if not Renewed;
- (d) the unique number assigned to the License; and

- (e) the signature of the License Issuer.

(3) The License is issued upon the License Issuer signing the License.

License Conditions

13-(1) Whether or not specified on the face of the License, it is a condition of every License that the Licensee, his or he heirs, executors, administrators and assigns indemnifies and saves harmless the City, its elected and non-elected officials, employees and agents from and against any and all manner of causes of action, losses, costs, damages, expenses, charges and other proceedings whatsoever made or brought against, suffered by, incurred or imposed on the City which are occasioned by or attributable to the issuance of a License under this By-law or the actions or failure to act by the Licensee and this indemnity shall survive the expiry, Revocation or abandonment of the License.

(2) Whether or not specified on the face of the License, it is a condition of every License that the Licensee:

- (a) maintains in effect with an insurer licensed in Ontario, comprehensive general liability insurance on an occurrence basis for an amount not less than two million (\$2,000,000) dollars. Any aggregate limit shall be equal to or greater than the amount of minimum requirements stated above, for the comprehensive general liability policy. The policy shall provide that it will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the effective date of cancellation or expiry. Evidence of renewal or replacement of a compliant insurance policy must be filed with the License Issuer prior to each insurance policy renewal date. However, the taking out of insurance shall not limit the liability of the Licensee. The insurance may be held by the Licensee or may be held by the Licensee's employer, provided the insurance policy extended coverage to the Licensee while in the employ of the employer;
- (b) provides Parking Enforcement only on the Private Property or Private Properties identified in the application for License;
- (c) continues to be authorized by the Owners to provide Parking Enforcement on his or her Private Property in the event that the Licensee is not the owner of the Private Property identified in paragraph 13(2)(b);

- (d) provides Parking Enforcement at a Private Property only if the Private Property has Signage posted which is compliant with the Traffic and Parking By-law;
- (e) directs to the License Issuer any request to tow a vehicle from Private Property, pursuant to the Traffic and Parking By-law;
- (f) provides Parking Enforcement consistent with the Traffic and Parking By-law;
- (g) provides on request, the name and telephone phone number of a contact Person to whom complaints regarding any Parking Infraction Notice issued by the Licensee may be submitted;
- (h) ensures continuing compliance with the requirements of this By-law for the issuance or renewal of a License;
- (i) operates in accordance with the City's training course for Parking Enforcement and under the direction of the License Issuer;
- (j) does not issue any enforcement document as part of Parking Enforcement other than:
 - (i) a Certificate of Parking Infraction and Parking Infraction Notice pursuant to Part II of the *Provincial Offences Act*; or
 - (ii) any other notice as authorized or directed to do so by the License Issuer;
- (k) attends court prepared to appear as a witness to defend any Parking Enforcement document issued pursuant to paragraph 13(2)(j) of this By-law, at the time and date specified in a notice from the City. This obligation shall continue during a License Suspension, or after a License expires or is otherwise Revoked;
- (l) maintains documents and evidence required to respond to inquiries regarding the Licensee's activities in Parking Enforcement or to appear as a witness in Court, as required by the License Issuer;
- (m) maintains the License on his or her person while engaging in Parking Enforcement pursuant to his or her License; and
- (n) displays the License to any Person who makes a request to see it.

Expiry of License / Extension of License

14.-(1) Unless renewed or Revoked prior to expiry, a License issued under this By-law shall expire on the anniversary of the Licensee's birth date.

(2) Despite subsection 14(1), where a new License is issued and the next birthday of the Licensee falls within ninety (90) days after the date of issuance of the License, the License shall instead, expire on the anniversary of the Licensee's birthday in the next following year.

(3) Subsection 14(2) does not apply to a renewal of a License or a License deemed to be issued pursuant to section 42 of this By-law.

(4) Unless renewed or Revoked prior to expiry, the License shall be deemed to be Revoked upon expiry.

License Property of City - No Transfer or Lease

15.-(1) Every License issued under this By-law remains the property of the City and shall be surrendered to the License Issuer in accordance with this By-law upon Suspension, Revocation or expiry of the License.

(2) Every License issued under this By-law is personal to the holder thereof. No Licensee shall lease, license, transfer, or purport to lease, license or transfer to another Person any or all of the rights under a License issued under this By-law or in any way authorize any other Person to exercise any of the rights exercisable by the Licensee under this By-law.

(3) Where a Licensee acts contrary to subsection 15(2), the License shall be deemed to be Revoked.

Replacement License - Lost, Defaced, Destroyed

16.-(1) Where a License has been defaced, lost or destroyed, the License Issuer may issue a replacement License upon:

- (a) application in writing in a form established by the License Issuer from time to time, signed by the Licensee;
- (b) provision of evidence satisfactory to the License Issuer that the License has been defaced, lost or destroyed;
- (c) payment of the fee determined in accordance with the User Fee By-law; and

- (d) in the case of a License which has been defaced, the surrender of the defaced License to the License Issuer.

Part 5 - License Suspension / Revocation

Deemed Revocation - Death

17-(1) Every License issued to an individual is deemed to be Revoked on the death of the individual.

Suspend or Revoke a License

18.-(1) In addition to any other reasons provided for in this By-law, the License Issuer may Suspend or Revoke a License under this By-law where, in the opinion of the License Issuer:

- (a) there is a failure to comply with any requirement set out in this By-law which results in or potentially results in harm to the public health or safety;
- (b) there is or has been a flagrant refusal to comply with any requirement set out in this By-law;
- (c) there has been a repeated failure to comply with one or more provisions of this By-law;
- (d) the conduct of the Licensee is or has been of a nature that is detrimental to the enforcement of this By-law, the safety of a Municipal Law Enforcement Officer or materially disrespectful of a Municipal Law Enforcement Officer;
- (e) any of the requirements for the issuance or renewal of a License can no longer be met;
- (f) there is a contravention of one or more of the conditions of the License;
- (g) there is a contravention of this By-law of a type for which Revocation or Suspension of a License is specifically provided for;
- (h) the License was issued in error or on mistaken, false or incorrect information; or
- (i) the Licensee cannot carry out his or her duties on an impartial and objective basis due to conflict of interest, which includes without limitation, engaging in:
 - (i) any business or transaction or having financial or other personal interest which is incompatible with the discharge of the duties of a Licensee;

- (ii) any activities which adversely interfere or conflict with a Licensee's regular duties in relation to the City; or
 - (iii) any activities or conduct, or making any representations outside of the normal functions of their appointment under subsection 6(1), which could appear to be an official act of the City or could appear to represent the opinion or policy of the City;
- (j) the Licensee has engaged in behaviour that is fraudulent or that constitutes a breach of trust with the City, including without limitation:
 - (i) using deceit to gain a personal advantage or benefit for himself or herself or for others;
 - (ii) illegally obtaining money, including the solicitation or acceptance of bribes;
 - (iii) intentionally providing false or incomplete information to the City; or
 - (iv) intentionally falsifying records;
- (k) the Licensee has intentionally circumvented City policy or procedure to gain personal advantage for himself or herself or for others; or
- (l) there is any other reason which the License Issuer considers to be a sufficient reason for the Revocation or Suspension.

(2) A Licensee may request a hearing in accordance with the procedure in section 23, where the Licensee's License was Suspended or Revoked on the basis of the exercise of the License Issuer's discretion under paragraph 18(1) (b), (c), (d), (e), (f), (h), (i), (j), (k) or (l).

Notice of Suspension or Revocation

19. (1) Where the License Issuer determines that a License should be Suspended or Revoked, the License Issuer shall give notice to the Licensee of:

- (a) the decision and particulars of the reason to Suspend or Revoke the License;
- (b) any rights to request a hearing before the Hearing Committee, the process to do so, and the time limitation for submitting the request;
- (c) the effective date of the Suspension or Revocation;

- (d) in the case of a Suspension, the period of time the Suspension will be in effect and where applicable, any conditions to be met during the Suspension period for the Suspension to be terminated; and
- (e) such other information as the License Issuer considers appropriate in the circumstances.

Guidelines for Suspensions

20.-(1) The License Issuer may terminate a notice of Suspension or shorten the duration of the Suspension where:

- (a) every deficiency identified in the notice of Suspension has been remedied to the satisfaction of the License Issuer; or
- (b) in the opinion of the License Issuer it is appropriate in the circumstances to do so.

(2) The License Issuer may extend the period of a Suspension where, in the opinion of the License Issuer, additional time is required to remediate any deficiency identified in the notice and in the opinion of the License Issuer, it is appropriate in the circumstances to provide such additional time.

(3) Where the period of Suspension exceeds the time remaining before the License expires, the Suspension shall not prevent the Licensee from applying for a renewal of the License and where the Suspension is conditional upon compliance with specified conditions, the License Issuer may assess the application for renewal as if the conditions had been complied with. Any Suspended License which is renewed shall continue to be Suspended on the same terms. Any Suspended License which has not been renewed prior to the date of expiry shall expire and an application for a new License will be required.

(4) The License Issuer may Revoke the License if, at the end of the Suspension period or any extended Suspension period, any conditions imposed by the License Issuer have not been complied with.

(5) The License Issuer may Revoke a License during a period of Suspension.

Decision Final

21. (1) The decision of the License Issuer to Suspend or Revoke a License shall be final:

- (a) if there is no right of appeal under section 18; or
- (b) no appeal by way of request for a hearing compliant with section 23 is filed with the License Issuer.

Part 6 - Notice / Hearings

Notice Requirements

22.-(1) Any notice to be given or required to be given by the License Issuer under this By-law may be given in writing, or may be given orally followed by a written confirmation of the oral notice mailed within two (2) Business Days of the oral notice.

(2) Written notice or written confirmation of an oral notice may be served personally or served by registered mail addressed to the applicant or Licensee at the address shown in the most recent application for a License or renewal, or such updated address as may have been provided.

(3) Any oral notice shall be deemed to have been served on the date it is given, whether or not the written confirmation is sent in time or received by the applicant or Licensee and any notice in writing shall be deemed to have been served on the date it is given if served by personal service, or on the fifth day after mailing if served by registered mail, whether or not it is actually received by the Person to whom it is addressed.

Hearings

23.-(1) Any Person entitled under this By-law to request a hearing before the Hearing Committee may apply in writing to the License Issuer for a hearing within thirty (30) days of the effective date of service of the notice of the decision of the License Issuer that the hearing relates to and, in the case of an application for a hearing regarding a Suspension or Revocation, shall surrender his or her License with the application.

(2) On receipt of a request for a hearing, the License Issuer shall review the request to determine if the request is timely and is based on grounds provided for in this By-law. If the License Issuer determines that the applicant for the hearing:

- (a) is entitled to a hearing, the License Issuer shall refer the request to the City Clerk; or
- (b) does not qualify for a hearing under this Bylaw, the License Issuer shall advise the applicant of his or her decision and the reason for the refusal.

(3) When asked to do so by the License Issuer, the City Clerk shall set a date, time and place for a hearing of the appeal before the Hearing Committee and give notice of the date, time and place of the hearing to the applicant for the hearing.

(4) On the date and time scheduled for the hearing, or such later date as may be set or consented to by the Hearing Committee, the Hearing Committee may hear and view any evidence provided by the License Issuer and by the applicant for the hearing and may:

- (a) uphold or deny the Suspension or Revocation of the License or the refusal to issue or renew a License, as the case may be, on any grounds open to the License Issuer;
- (b) in the event that the Suspension of a License is upheld, increase or decrease the duration of the Suspension or impose conditions or change existing conditions for the termination of the Suspension; and
- (c) in the event that the Revocation of a License or refusal to issue a License or renewal of a License is overturned, impose conditions on issuance or renewal of the License as if the Hearing Committee were the License Issuer.

(5) Upon the Hearing Committee reaching a decision, the City Clerk shall give notice of the decision in writing to the applicant for the hearing, and the License Issuer shall:

- (a) in the event that the Revocation or Suspension is not upheld, return the surrendered License to the Licensee;
- (b) in the event that a Suspension was upheld, return the surrendered License to the Licensee at the end of the Suspension period, provided any conditions imposed have been complied with;
- (c) in the event that a Revocation is upheld, cancel the License; and
- (d) in the event that a refusal to issue a License is not upheld, issue the License to the applicant as directed by the Hearing Committee.

Onus

24.-(1) The onus is on the applicant for a License or renewal of a License as the case may be, to provide evidence to the satisfaction of the License Issuer that the applicant is entitled to the issuance or renewal of the License.

(2) The onus is on a Licensee whose License has been Suspended to provide evidence satisfactory to the License Issuer that the Suspension should be terminated.

(3) On a hearing before the Hearing Committee, the onus is on the applicant or the Licensee, as the case may be to provide evidence satisfactory to the Hearing Committee that the License should be issued or renewed or the Suspension or Revocation should be terminated, as the case may be.

Part 7 - Additional Duties of License Issuer

Inspection

25.-(1) In addition to the Inspection requirements under section 9 of this By-law, the License Issuer may conduct an Inspection or Investigation at any time with or without notice to determine compliance with this By-law.

(2) The License Issuer may be accompanied on an Inspection by such officials and representatives of City departments as the License Issuer may consider appropriate to determine compliance with the requirements of this By-law.

Part 8 - Duties - Licensee

Compliance with Conditions

26.-(1) Every Licensee shall comply with the conditions of his or her License set out in section 13 of this By-law.

Change in License Information

27.-(1) Every Licensee shall provide the License Issuer with particulars in writing of any change to any information disclosed in the application for a License or for renewal of a License, within five (5) days of such change, and provide such additional information or documentation as the Licensee would be required to provide had this information been disclosed in the original application for a License or renewal of a License.

(2) Where directed to do so by the License Issuer, the Licensee shall surrender the License to the License Issuer:

- (a) for cancellation in the event that the new information results in the Licensee no longer qualifying for a License; or

- (b) for re-issuance if the new information would affect the information shown on the face of the License.

(3) Notwithstanding subsection 27(1), in the case where the Licensee proposes to make a change to the list of Private Properties at which he or she engages in Parking Enforcement, the Licensee shall at least five (5) days before the proposed change:

- (a) notify the License Issuer in writing of the proposed change;
- (b) provide the License Issuer of the municipal address of each Private Property at which the Licensee will no longer be providing Property Enforcement and the municipal address of each additional Private Property at which the Licensee proposes to provide Property Enforcement; and
- (c) where the Licensee is not the Owner of the Private Property at which Parking Enforcement is proposed to be provided, provide the License Issuer with written authorization from each Owner of each such additional Private Property to the provision of Property Enforcement by the Licensee.

Cease to Provide Parking Enforcement

28.-(1) Any Licensee who for any reason, is no longer authorized by an Owner of Private Property to provide Parking Enforcement at his or her Property, shall surrender the License to the License Issuer for cancellation.

(2) Any License issued to a Licensee who ceases to be authorized to provide Parking Enforcement on Private Property is deemed Revoked whether or not it is surrendered for cancellation.

Surrender License - Suspension / Revocation

29.-(1) Every Licensee shall surrender his or her License to the License Issuer upon Revocation, deemed Revocation, or Suspension of a License:

- (a) for cancellation in the event that the Licensee is not entitled to appeal the Suspension or Revocation or deemed Revocation, or does not submit an appeal in a timely manner; or
- (b) to be held by the License Issuer pending the outcome of an appeal of the decision and cancelled or returned to the Licensee as directed by the Hearing Committee.

(2) Where a License has been deemed to be Revoked by the death of the Licensee, that person's estate trustee or the next of kin shall, surrender the License to the License Issuer for cancellation.

(3) Failure to surrender a License does not affect the Suspension, Revocation or deemed Revocation.

No Rights during Revocation or Suspension

30.-(1) No Person shall engage in Private Enforcement while a License is Suspended or after it is Revoked or is deemed to be Suspended or is deemed to be Revoked.

(2) Where an application is filed to appeal the Suspension or Revocation of a License, the License remains Suspended or Revoked pending the decision of the Hearing Committee.

Identify Self

31. Every Licensee shall, when requested to do so by a Municipal Law Enforcement Officer:

- (a) produce his or her License; and
- (b) identify himself or herself and provide such proof of identity as may be requested.

Co-operate with Inspection / Investigation

32. Every Licensee and every Owner of Private Property at which Parking Enforcement is provided pursuant to this By-law, shall co-operate as necessary with an Inspection or an Investigation.

General Prohibitions

33.-(1) No Licensee shall, at any time;

- (a) give or pay to any Owner or occupant of any Private Property any fee, commission, gift or other consideration in return for permitting the Licensee to provide Parking Enforcement on that Private Property;
- (b) demand or receive any financial incentive from the Owner or occupant of a Private Property on which the Licensee is providing Parking Enforcement, relating to the number of Parking Enforcement actions taken on that Private Property;

- (c) request, require, demand or receive payment of any fee by the owner or driver of a vehicle while engaging in Parking Enforcement;
- (d) alter any Parking Infraction Notice issued while engaging in Parking Enforcement, except as may be specifically authorized and directed by the City; or
- (e) represent himself or herself at any time as an employee of the City.

Part 9 - Enforcement

Enforcement - No Obstruction, Etc.

34.-(1) This By-law may be enforced by a Municipal Law Enforcement Officer.

(2) No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person exercising a power or performing a duty under this By-law.

Offence

35.-(1) Every Person who contravenes any of the provisions of this By-law and any director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) For the purposes of subsection 35(1), each day on which a Person contravenes any of the provisions of this By-law shall be deemed to constitute a separate offence under this By-law.

(3) The levying and payment of any fine as provided for under the *Provincial Offences Act* shall not relieve a person from the necessity of compliance with the obligations under this By-law.

(4) The making of a false or intentionally misleading statement or representation in any agreement or request for permission provided for by this By-law shall be deemed to be a violation of the provisions of this By-law.

Right of Entry - Inspection

36. A Municipal Law Enforcement Officer may enter on Private Property at all reasonable times to ascertain whether there is compliance with:

- (a) the provisions of this By-law;
- (b) a direction or order or notice given under this By-law; or

- (c) the conditions of a License issued under this By-law.

Order to Discontinue

37. Where the License Issuer is satisfied that a contravention of this By-law has occurred, the License Issuer may make an order requiring the Person who contravened this By-law or who caused or permitted the contravention to discontinue the contravening activity. The order shall set out reasonable particulars of the contravention, the municipal address or other description of the land on which the contravention is occurring and the date by which there must be compliance.

Service of Orders

38. Service of an Order issued under section 37 shall be given to each Person, by delivering personally to the Person or by registered mail at the address recorded for that Person in the last filed application for a License or Renewal of a License in the records of the License Issuer or in the case of the Owner of Private Property at which Parking Enforcement is provided pursuant to this By-law, at the address shown for service in the tax roll for the Private Property.

Comply with Order

39. Every Person who is served with an order under this By-law shall comply with the requirements of the order within the time period specified in the order.

Prohibition Order

40. When a Person has been convicted of an offence under this By-law, the Ontario Court (Provincial Division), or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation of the offence or doing of any act or thing by the Person convicted directed towards the continuation of the offence.

Confidential Information

41.-(1) The License Issuer is authorized to collect personal information for the purposes of administering this By-law.

(2) All information submitted to and collected by the City in accordance with this By-law shall, unless the City Clerk determines otherwise, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA).

(3) In the event that any Person in submitting information to the City or to the License Issuer in any form, as required under this By-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the Person submitting the information shall so identify that information upon its submission to the City or the License Issuer and shall provide sufficient details as to the reason for its purported exemption from disclosure.

Part 10 - Transition

Transition

42. Every person who holds a Certificate of Appointment pursuant to a by-law passed by the City in effect upon passage of this By-law shall be deemed to be issued a License pursuant to this By-law which License shall expire on the anniversary of the Licensee's birthday.

Part 11 - General

Short Title

43. This Bylaw may be referred to as the "Private Property Parking Control Officer Licensing By-law".

Effective

44. This By-law comes into force and effect on January 1st, 2016.

Read and Passed in Open Council this 24th day of November, 2015



Mayor



Clerk