



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Licensing and By-law Services Division**  
**and**  
**Transportation Planning and Parking Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	February 4, 2020
<b>SUBJECT/REPORT NO:</b>	Amendments to the Idling Control By-law 07-160 and Administrative Penalty By-law 17-225 to Establish a Parking Contravention (PED20035) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Robert Ustrzycki (905) 546-2424 Ext. 4721 James Buffett (905) 546-2424 Ext. 3177
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Brian Hollingworth Director, Transportation Planning and Parking Division Planning and Economic Development Department

**RECOMMENDATION**

- (a) That the amendment to the Idling Control By-law 07-160 and Administrative Penalty By-law (APS) 17-225 to create a parking contravention described in Report PED20035, detailed in the proposed amending by-law attached as Appendix "A" be approved;
- (b) That the amending by-law attached as Appendix "A" to Report PED20035, which has been prepared in a form satisfactory to the City Solicitor be enacted by Council.

## **EXECUTIVE SUMMARY**

This Report is related to and forms part of the Planning and Economic Development Department's response to the City's Climate Change Administration Plan. Currently, the City of Hamilton's Idling Control By-law 07-160 (Idling Control By-law) is enforced by issuing tickets under the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, however the offence of "idling" is more properly categorized as a "parking offence" and could be enforced under the City's Administrative Penalty System (APS). This Report proposes amendments to both the Idling Control By-law as well as the City's Administrative Penalties By-law, to designate the Idling Control By-law as a parking related by-law that would fall under the City's APS. This change will make the enforcement of the Idling By-law more efficient and effective to help improve air quality and address the City's climate change commitments.

## **Alternatives for Consideration – Not Applicable**

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial/Staffing: Parking Enforcement Officers appointed as Municipal Law Enforcement Officers are authorized to enforce the parking by-laws of the City. Adopting the proposed amendment to establish the Idling Control By-law as a parking by-law will have no impact on current Hamilton Municipal Parking System (HMPS) resources.

Legal: Staff recommendation to amend the offence section of the Idling Control By-law as a parking contravention is the preferred method to enforce the idling of vehicles.

## **HISTORICAL BACKGROUND**

On May 16, 2007, City Council enacted the City of Hamilton Idling Control By-law to regulate the idling of vehicles to reduce greenhouse gas emissions in the City's commitment to the Federation of Canadian Municipalities Partners for Climate Protection Program.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The *Municipal Act, 2001* authorizes municipalities to pass by-laws respecting the environmental well-being of the municipality and its inhabitants, including climate change, and authorizes municipalities to pass a by-law for parking. The *Municipal Act, 2001* also authorizes municipalities to require the owner of a vehicle to pay

administrative penalties if their vehicle was left parked, standing or stopped in contravention of a designated by-law.

## **RELEVANT CONSULTATION**

Legal Services, was consulted in the preparation of this Report and the draft amending by-law attached as Appendix “A” to Report PED20035.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

As part of continuous improvement efforts, staff work to review enforcement activities, and update various by-laws to address specific municipal needs identified by Council, committees, staff, public and the courts. In addition to continuous improvement efforts, by-laws require changes over time to improve processes to provide effective by-laws.

Approximately 330 calls for idling contraventions were received since January 1, 2015, resulting in only two charges with no convictions. A by-law needs to be enforceable to be effective. Staff researched and reviewed the relevant technical and regulatory support documentation of existing idling control by-laws in other jurisdictions. Idling control by-laws among municipalities share the same enforcement challenges and difficulties, attributed to:

- length of time waiting for the driver/operator to return to the vehicle;
- requirement to identify the driver/operator; and
- lack of authority to identify the driver/operator.

The current Idling Control By-law shares this enforcement challenge. It establishes an offence normally considered as a moving contravention where the driver/operator be positively identified, and any legal action requires a lengthy formal trial in Provincial Offence Court. In principle, a parking contravention is not considered to be a moving violation. Idling contraventions only occur when the subject vehicle has been stationary for a period and in most events when the vehicle is unoccupied.

The current *Municipal Act, 2001* provides the authority to require an owner of a vehicle to pay an administrative penalty if the municipality is satisfied that the vehicle was left parked, standing or stopped in contravention of a designated by-law. The owner of the vehicle is ultimately liable, even though the owner was not the driver at the time of the contravention, unless the vehicle was used without the owner's consent.

The proposed amendment creates a parking offence where:

- the owner of the vehicle, not the driver/operator, is liable for a contravention;

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- the provisions apply to the highway and any lands that are not a highway; and
- City vehicles are exempt while the operator is engaged in the performance of his or her duties.

The current resources and availability of staff in HMPS provides an efficient and expedient level of service to improve the City's response to vehicles in contravention of the Idling Control By-law.

To be consistent with the enforcement of other parking contraventions, and considering the environmental impact, staff recommend the proposed amendment be included in the APS By-law with an administrative penalty of \$100, which is a reasonable amount to promote compliance with the Idling By-law. The use of APS has produced positive impacts to administer and enforce parking contraventions that provides a fair, effective and efficient process to dispute parking tickets.

#### **ALTERNATIVES FOR CONSIDERATION**

N/A

#### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

##### **Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

##### **Healthy and Safe Communities**

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

##### **Clean and Green**

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

##### **Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

#### **APPENDICES AND SCHEDULES ATTACHED**

Appendix "A": Draft amendment to the Idling Control By-law 07-160 and Administrative Penalty By-law 17-225