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| Subject: | Draft Parking on an Unauthorized Area of Land By-law and Amendments to the Administrative Monetary Penalty System By-law |
| To: | Planning & Economic Development Committee |
| From: | Planning and Development Department |

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| Report Number: | PD-55-19 |
| Wards Affected: | All |
| Date to Committee: | Monday, July 15, 2019 |
| Date to Council: | Monday, July 22, 2019 |

Recommendation:

Direct staff to coordinate a Public Information Centre (PIC) to obtain input on the draft Parking on an Unauthorized Area of Land By-law and Amendments to the Administrative Monetary Penalty System (AMPS) By-law prior to being presented to Council for approval.

Purpose:

The purpose of this report is to provide information to Council regarding a new draft by-law regulating the Unauthorized Parking on a Property attached as Appendix A and an amendment to the AMPS by-law as attached as Appendix B to establish short form wording and set fines for contraventions of the proposed draft by-law.

Background:

The Town has received multiple complaints from residents and Councillors with concerns of vehicles parking on front and side lawns in their neighbourhoods. To date the Town has not adopted the authority to regulate this type of behaviour and as a result, there is no remedy to address the residents' concerns. The *Municipal Act, 2001* provides the Town the authority to establish regulations to prohibit parking of vehicles on private property without the owner's permission as well as unwanted behaviours on Town road allowances. Based on the growth in the Town, staff see a need to adopt this authority as this regulation would bring the Town to a consistent standard with other Regional and Provincial municipalities.

Report:

Staff have identified through complaints, discussion and experience there is a need to establish a by-law that will further regulate the parking behaviours within a residential zone.

It is seen as a standard practice that a municipality have regulations to ensure appropriate property use. Addressing vehicles parking in unauthorized areas on a property through means of by-law enforcement would bring the Town to a consistent standard with neighbouring municipalities and others throughout the province as well as nationally.

Typically, parking on private property is regulated through a municipal zoning by-law as a base. Currently, the Town does not have strong enough provisions within its Zoning By-law which prohibits a vehicle from parking on a front, side or rear lawn within a residential zone. There is language in the zoning by-law regarding lot coverages, green space, types of vehicles that can park on a property and the maximum width of a driveway for some residential uses, but not the location on a property. The intent is to have a vehicle park on a Town approved portion of a lot which is commonly referred to a parking area or driveway. The zoning by-law ensures there is a minimum number of parking spaces on a lot. It will also restrict the addition of driveway sizes and orientation, but residents can apply to have this reviewed for their own properties through appropriate application. The Zoning By-law has provisions within regarding a percentage of a front yard that can be used as a driveway, but this does not address parking on lawns. These regulations assist in identifying the approved location for parking on a property, but do not fully cover all aspects of it which leave opportunity for unwanted behaviours such as vehicles parking on lawn areas to occur.

The Town is currently conducting a comprehensive review of the Zoning By-law with the goal of fulsomely updating it to bring it in line with most recent Provincial policy and land-use patterns. As part of this review, parking provisions will be considered.

However, it should be noted that even if the Town had these regulations already in place through the Zoning By-law, this draft by-law would still likely be proposed. The process to enforce zoning violations can be lengthy and costly. A standard zoning investigation requires an Officer to provide official notice of a contravention through a *Zoning Violation Notice* to the property owner. These notices will identify a term for a property owner to complete work to ensure the violation is rectified. When non-compliance is the result, Officers may lay a charge. Zoning charges are Part III offences in the *Provincial Offences Act* and result in a direct summons to court and the fine determined by a Justice of the Peace. This can delay compliance while the court process plays itself out. In a situation where non-compliance occurs, it likely would take multiple months to get a resolution. As this behaviours can be quickly complied with, parking enforcement and regulation is a more appropriate and effective system of adding parking on lawns.

Having these provisions placed in a by-law which allows for parking enforcement on private property would authorize the Town to act with immediate action, resulting in the ability to immediately issue a penalty notice, as required. These can continue to be issued until compliance is achieved through the AMPS process. This action will not only be more efficient, but also a better use of Officer time and resources and less expense to the Town. Many municipalities have gone in this direction for the reasons started above.

With this draft by-law in place, the Town can also ensure landscaped and/or green areas on properties are better maintained, achieving a higher measure of compliance with our Clean Yards and Property Standards By-laws. We can ensure non-approved home businesses are not forming and operating in these residential zones and allow the municipality to assist where undesirable situations are apparent.

This by-law will allow Officers to provide enforcement to vehicles parking off of the Town approved parking areas on a property. Enforcement can take place pro-actively or based off complaint. It will also ensure vehicles are not parking on the Town road allowance portion of a property. This piece is important to ensure situations do not arise where the Town may need to complete work on infrastructure within the road allowance. With provisions in place this will allow Officers to act to have a vehicle fined and removed if required. These provisions will provide for more access to a property (front door, rear of property) for emergency services to carry out potential life saving measures.

Staff had added an additional provision to regulate the parking, standing or stopping of a motor vehicle on Town road allowances outside of a residential area. Typically, a municipality will not restrict parking off a driveway or approved parking area in non-residential area as permitted uses can vary and become necessary for that property to use these proportions of a land to operate a business or farming need. However, a Town road allowance should be kept clear for similar reasons as mentioned above. This would also bring consistency as to regulate parking on any road allowance in the Town. Staff have received complaints from residents regarding this issue and as such recommend its inclusion in this draft by-law.

Financial, Legal, Staff Considerations:

Financial: Set fine proposed: \$40.

This fine amount has been proposed to act as a deterrent for a vehicle operator avoiding a \$25 or \$30 fine on street while moving a vehicle to a landscaped portion of a property (Unauthorized area). With a higher fine this will assist in ensuring this behaviour is not seen as a *lesser of two evils* result for the operator and have them seek a legal parking location.

Staffing: No staffing changes are required

Legal: The draft by-laws have been sent to the Town's legal representative to ensure proper legislation has been included and enforcement can take place.

Public Engagement Matters:

Staff have completed municipal comparisons within the Niagara Region. Welland was contacted and documentation reviewed as a main source of consultation. Other municipality by-law reviews occurred with Niagara-on-the-lake, Thorold, Port Colborne, St. Catharines, Mississauga, London, Hamilton and Guelph. While there are some municipalities only using zoning provisions for these matters, a majority have changed to parking enforcement as it has been determined that there are quicker results and longer-term compliance.

Staff have had many conversations with residents who are frustrated with the lack of enforcement options in these situations and have required on multiple occasions that the Town create by-laws to stop this behaviour from occurring. Comments have been centered around the negative appearance of a neighbourhood, poor property maintenance, property damage and decreased property value. Staff have noted the complaints and the specific concerns and applied them as appropriate to this draft by-law.

Next steps will include scheduling a PIC to obtain further input from residents that have not had the opportunity to do so. The PIC will also provide the public with information on regulation, legislation and authorities the Town may have as well as does not have. The outcome of this PIC will be reported back to Council through a final report on this matter.

Conclusion:

Staff have heard from many residents on this matter and as a result of the municipality comparisons and complaints, staff are providing this information report to allow Council an opportunity to become familiar with the proposal and concerns of residents. The enactment of this by-law will allow for immediate enforcement and/or compliance with a behaviour that is typically known to be unwanted in a residential zone.

Respectfully submitted,

Dan Smith
Manager, Municipal Law Enforcement

Appendices:

Appendix A Draft Parking on an Unauthorized Area of Land By-law
Appendix B Draft Amendment to the AMPS By-law

Report Approval:

Report has been reviewed by the Associate Director of Planning and Development. The report has been approved by the Director of Planning and Development and the Chief Administrative Officer.

THE CORPORATION OF THE TOWN OF LINCOLN

A BY-LAW TO REGULATE THE PARKING OF MOTOR VEHICLES ON AN UNAUTHORIZED AREA OF LAND

By-law No. 2019-XX

WHEREAS Sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (the "*Municipal Act, 2001*") authorizes The Corporation of the Town of Lincoln to pass by-laws necessary or desirable for municipal purposes;

AND WHEREAS subsection 11(3)(8) of the *Municipal Act, 2001*, as amended, authorizes municipalities to pass by-laws respecting parking, except on highways;

AND WHEREAS subsection 100.1(1) of the *Municipal Act, 2001*, provides that a local municipality may, in respect of land not owned or occupied by the municipality, regulate or prohibit the parking or leaving of motor vehicles without the consent of the owner of the land;

AND WHEREAS subsection 101(1) of the *Municipal Act, 2001*, provides that if a municipality passes a by-law regulating or prohibiting the parking or leaving of a motor vehicle on land, it may 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 the by-law and section 170 (15) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, applies with necessary modifications to the by-law;

AND WHEREAS section 101(2) of the *Municipal Act, 2001*, provides that a municipality may enter on land at reasonable times for the purposes described in section 101(1);

AND WHEREAS section 128 of the *Municipal Act, 2001*, provides that a local municipality may pass by-laws prohibiting and regulating with respect to public nuisances, including matters that, in the opinion of the Council may become a public nuisance;

AND WHEREAS the Town has passed a parking By-law, "a By-law regulating traffic and parking on local municipal roads" no. 89-28 and amendments, regulating the parking of vehicles on right of ways under the jurisdiction of the Town;

AND WHEREAS in the opinion of Council of the Town, parking, standing or stopping a motor vehicle on an unauthorized area of a property is a public nuisance;

NOW THEREFORE, the Council of the Corporation of the Town of Lincoln hereby enacts as follows:

1. SHORT TITLE

1.1 This By-law shall be known as the “Parking on an Unauthorized Area of Land by-law”.

2. INTERPRETATION

2.1 In this by-law,

“Council” means the Council of the Town;

“Lot” means a parcel of land which can be legally conveyed pursuant to the *Planning Act*;

“Lot Line” means the boundary of a lot;

“Motor Vehicle” shall mean an automobile, motorcycle, motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power;

“Non-Residential Area” means any zone as per the Town *Zoning By-law, as amended*, which is not defined as a residential area;

“Officer” means a Municipal Law Enforcement Officer appointed by Town By-law, a police officer employed by the Niagara Regional Police or the Ontario Provincial Police, or other person appointed by the Town to enforce this By-law;

“Park” or “parking” when prohibited, means the halting of a vehicle, even momentarily, whether or not the vehicle is occupied;

“Parking Area” means a Town approved area of land which is provided and maintained for the parking of motor vehicles;

“Parking By-Law” means the Town By-law No. 89-28 “a By-law regulating traffic and parking on local municipal roads” and amendments thereto and any successor By-law regulating the parking on local municipal roads in the Town;

“Residential Zone” means an area within the Town limits identified for residential use as per the Town *Zoning By-law, as amended*;

“Road Allowance” means the land owned by the Town which may lie between the paved portion of a street and/or travelled portion of the roadway and a private property lot line in a residential zone;

“Town” means The Corporation of the Town of Lincoln or any of its authorized full-time employees;

“Unauthorized Area” means a location on a property which has not been approved by the town as a parking area for motor vehicles and may include the Town road allowance.

- 2.2 For the purposes of this By-law, unless the context otherwise requires, words imparting the singular shall include the plural and words imparting the masculine gender shall include the feminine and vice versa.
- 2.3 Where a form of words or expression is prescribed in this By-law, deviations therefrom not affecting the substance or calculated to mislead do not vitiate them.
- 2.4 Should any section, clause or provision of this By-law be held by a court of competent jurisdiction to be invalid, the validity of the remainder of this By-law shall not be affected.
- 2.5 References in this By-law to any By-law, statute or statutory provision include references to that By-law, statute or statutory provision as it may from time to time be amended, extended or re-enacted.

3. SCOPE

- 3.1 This By-law shall apply to all land in the Town in a residential zone and all Town road allowances in all zones under the jurisdiction of the Town.
- 3.2 This By-law does not regulate the travelled portion of the right of way, or other areas governed by the Town’s Parking By-law.

4. PERMISSIBLE PARKING LOCATION

- 4.1 A person may park a motor vehicle on private property on a paved driveway or parking area authorized by the Town pursuant to the provisions of the *Planning Act, 1990*, c. P. 13.

5. GENERAL PROHIBITIONS

- 5.1 No person shall park, stand or stop a motor vehicle on an area of a property in a residential zone except as authorized by statute, regulation, written agreement, By-law or otherwise by the Town.
- 5.2 No person shall park, stand or stop a motor vehicle on any Town road allowance, outside of the travelled portion of the roadway, in a non-residential area except as authorized by statute, regulation, By-law, agreement, permit or otherwise by the Town.

6. EXEMPTIONS – TEMPORARY PERMIT

- 6.1 A person may apply to the Town for a temporary exemption permit from this By-law or any provision of it. The Town, in its sole discretion, may issue or refuse a permit and impose conditions.

7. OFFENCE AND PENALTY

- 7.1 Every Person who contravenes any provision of this By-law is guilty of an offence and shall, when given a penalty notice, be liable to pay to the Town an administrative penalty pursuant to section 4 of the Town By-law, 2017-24, *Administrative Monetary Penalty System By-law*, as amended.
- 7.2 The owner of the motor vehicle is liable to any penalty provided under this by-law, regardless of the driver of the motor vehicle at the time of the offence pursuant to section 4 of the Town By-law, 2017-24, *Administrative Monetary Penalty System By-law*, as amended.

8. ENFORCEMENT

- 8.1 An Officer upon discovery of any motor vehicle parked or left in contravention of this 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*, R.S.O. 1990, Chapter R.25, as amended.
- 8.2 An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this by-law is being complied with.
- 8.3 An Officer upon discovery of a motor vehicle in contravention of this by-law may affix a penalty notice to the motor vehicle or otherwise issue said parking infraction notice to the person having care and control of said motor vehicle, pursuant to section 4 of the Town By-law 2017-24, *Administrative Monetary Penalty System By-law*, as amended.
- 8.4 A penalty notice shall include the following information:
 - 8.4.1 The vehicle license plate number or vehicle identification number;
 - 8.4.2 The penalty notice date; and
 - 8.4.3 A number that is unique to the penalty notice.

9. EFFECTIVE DATE OF BY-LAW

9.1 This by-law shall come into force and effect on the date of its passing and enactment.

READ A FIRST TIME THIS <*> DAY OF <*>, <*>.
READ A SECOND TIME THIS <*> DAY OF <*>, <*>.
READ A THIRD TIME AND FINALLY PASSED THIS <*> DAY OF <*>, <*>.

MAYOR: SANDRA EASTON

CLERK: JULIE KIRKELOS

36505825.2

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THE CORPORATION OF THE TOWN OF LINCOLN

A BY-LAW TO AMEND BY-LAW NO. 2017-24, BEING A BY-LAW TO ESTABLISH AN ADMINISTRATIVE PENALTY SYSTEM RESPECTING THE STOPPING, STANDING OR PARKING OF VEHICLES IN THE TOWN OF LINCOLN.

BY-LAW NO. 2019-XX

WHEREAS:

1. Sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorize the Corporation of the Town of Lincoln to pass by-laws necessary or desirable for municipal purposes;
2. Section 391 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws imposing fees or charges for costs payable by it for services or activities, and services or activities provided or done by or on behalf of the municipality;
3. Section 102.1(1) of the *Municipal Act, 2001* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person failed to comply with any by-laws respecting the parking, standing, or stopping of vehicles;
4. The Province adopted the “Administrative Penalties” regulation, O. Reg. 333/07 pursuant to the *Municipal Act, 2001* which applies to administrative penalties in respect of the parking, standing or stopping of vehicles;
5. The Council of the Corporation of the Town of Lincoln deemed it necessary to have an administrative penalty system in respect of the parking, standing or stopping of vehicles established through By-law 2017-24;
6. It is desirable to amend By-law 2017-24;

NOW THEREFORE, the Council of the Corporation of the Town of Lincoln hereby enacts as follows:

1. That By-law No. 2017-24 is hereby amended attached as **Appendix A**.
2. That **Appendix B**, attached hereto and forming part of this By-law, is hereby appended as Schedule “G” to By-law No. 2017-24, and shall be deemed to be part of that By-law.
3. That the definitions in subsection 2.2 and 2.6 is amended by inserting Schedule “G”.
4. That subsection 3.1 is amended by inserting Schedule “G”.
5. That subsection 4.1 is amended by inserting Schedule “G”.
6. That subsection 4.3(d) is amended by inserting Schedule “G”.
7. This By-law shall come into full force and effect on the date of final passing.

BY-LAW read a FIRST time this XX day of XXX, 2019.

BY-LAW read a SECOND time this XX day of XXX, 2019.

BY-LAW read a THIRD time and FINALLY PASSED this XX day of XXX, 2019.

MAYOR: SANDRA EASTON

CLERK: JULIE KIRKELOS

DRAFT

APPENDIX A

Corporation of the Town of Lincoln By-Law 2017-24

AND WHEREAS, The Corporation of the Town of Lincoln has enacted a number of by-laws regulating the parking, standing or stopping of vehicles, namely By-law No. 89-2000, as amended, being a By-law regulating traffic and parking on Town roads; By-law 2017-25, being a By-law designating Accessible Parking; By-law No 05-70, as amended, being a By-law designating and establishing Fire Routes; By-law No. 05-90, as amended, being a By-law regulating parking in municipal parking lots; By-law No. 2017-25, By-law No. 08-66, as amended, being a By-law regulating the use of municipally-owned parks, By-law 2019-30, as amended, being a By-law to regulate the parking of motor vehicles on private property and By-law 2019-XX, as amended, being a By-law to regulate parking of motor vehicles on an Unauthorized area of land.

APPENDIX B

Corporation of the Town of Lincoln By-Law 2017-24

SCHEDULE "G"

TOWN OF LINCOLN ADMINISTRATIVE PENALTY BY-LAW
DESIGNATED BY-LAW PROVISIONS PARKING OF MOTOR VEHICLES ON
AN UNAUTHORIZED AREA OF LAND
BY-LAW 2019-XX

- 1. For the purposes of Section 3 of this By-law, Column 1 in the following table lists the provisions in the Private and Municipal Property Parking By-law No. 2019-XX, as amended, that are hereby designated for the purposes of 3(1)(b) of the Regulation.
- 2. Column 2 in the following table sets out the short form wording to be used in a Penalty Notice for the contravention of the designated provisions listed in Column 1.
- 3. Column 3 in the following table sets out the Administrative Penalty amounts that are payable for contraventions of the designated provisions listed in Column 1.

| ITEM | COLUMN 1 Designated Provision | COLUMN 2 Short Form Wording | COLUMN 3 Administrative Penalty |
|------|-------------------------------------|---|---------------------------------------|
| 1. | Sec. 7 | Park on an Unauthorized Area of Land | \$40.00 |