



**CORPORATE SERVICES COMMISSION**

TOWN OF NEWMARKET

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June 11, 2015

**JOINT REPORT CORPORATE SERVICES & DEVELOPMENT & INFRASTRUCTURE  
SERVICES REPORT 2015-40**

TO: Committee of the Whole

SUBJECT: Regulation of Canada Post Community Mailbox Installations on Municipal Roadways

ORIGIN: Ted Horton, AMCTO Intern

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**RECOMMENDATIONS**

**THAT Joint Corporate Services & Development & Infrastructure Services Report 2015-40 dated June 11, 2015 regarding the Regulation of Canada Post Community Mailbox Installations on Municipal Roadways be received.**

**AND THAT Staff be directed to monitor the ongoing Ontario Superior Court of Justice case in Hamilton and report back to Committee regarding the verdict and potential impact on Town operations and legislative role.**

**AND THAT Staff be directed to investigate aligning the Town's by-laws with the City of Hamilton's By-law Number 15-091 which regulates the installation of equipment on roads with the goal of bringing a by-law for Council to consider in Q3 of 2015.**

**COMMENTS**

**Purpose**

In response to direction from Council at its June 1<sup>st</sup> meeting, the purpose of this report is to provide Council with information regarding a potential new by-law which, among other matters, would regulate the installation of Canada Post community mailbox (CMBs) equipment on municipal roads. This report outlines the challenges of implementing such a by-law and recommends that Council not consider adopting such a by-law until the outcome of a pending court case is determined.

This report sets out a background to the issue of CMBs, an analysis of the current questions regarding the jurisdiction of municipalities over CMB locations, existing Town by-laws related to this purpose, and alternatives for Council to consider.

## **Background**

Canada Post is in the process of a five-year community mailbox initiative to convert households that still receive their mail door-to-door to community mailbox delivery. Planned installation of said community mailboxes in Newmarket is intended for 2015. Canada Post has consulted with Town staff and residents regarding community mailboxes and their locations, and staff have reviewed the proposed locations and provided feedback to Canada Post. Canada Post is currently preparing final plans for the community mailbox locations in Newmarket.

At the June 1, 2015 Council meeting, Newmarket Council adopted the following motion regarding Canada Post Community Mailboxes:

NOW THEREFORE BE IT RESOLVED that Council direct the Mayor to send a letter, copied to Members of Parliament, Ontario Members of Provincial Parliament, and all Ontario municipalities, that requests the Federal Minister of Transport, who oversees Canada Post, to require Canada Post to halt installation of community mailboxes immediately and to adhere to its Five-point Action Plan requirement to engage in full and meaningful consultation with all stakeholders, including the Town and its residents;

BE IT FURTHER RESOLVED THAT Council direct staff to bring forward recommendations to the next Committee of the Whole or Council meeting to align the Town's by-laws with the City of Hamilton's By-law Number 15-091 which regulates the installation of equipment on roads; and

BE IT FURTHER RESOLVED THAT Council direct staff to develop appropriate standards to require Canada Post to apply for permits with an appropriate fee that reflects the resources required and costs incurred by the Town to install and maintain community mailboxes in established neighbourhoods; and

BE IT FURTHER RESOLVED THAT staff bring back a new by-law for Council's enactment.

In the interest of time, staff have relied on information from reports from the Town of Aurora, City of Hamilton, and the federal government to prepare this report.

## **Analysis**

In response to Council's direction, staff have prepared this report to present their recommendations regarding a response to the location of CMBs in Newmarket. As indicated above, staff recommend that the Town monitor the court case proceeding in Hamilton before adopting a by-law that may be unenforceable. Additional time is also required for staff to investigate how the Town's by-laws can be aligned with the City of Hamilton's By-law Number 15-091.

## **Community Mailbox Locations**

Canada Post is proposing more than 200 community mailbox locations within Newmarket. Canada Post has advised Town staff that notice has been mailed to residents affected by the switch from door-to-door delivery to community mailboxes indicating the location of their new community mailbox. Mailbox locations can also be found on a map on the Canada Post website.

As a federal agency, Canada Post has indicated that they have the mandate to use the municipal road allowance to accommodate the installation of community mailboxes. Canada Post has

indicated in a letter to the Federation of Canadian Municipalities that working with municipalities is a critical step in the plan to move to CMBs and that consultation with municipalities and the public will help to inform CMB locations. Staff has provided feedback to Canada Post regarding the location of mailboxes, which has led to some changes, but Canada Post has maintained that it retains the final ability to determine the locations of the community mailboxes.

Information Report 2015-10 provided information to Council regarding the proposed CMB locations and the detailed comments that staff has provided to Canada Post, dealing with the following matters:

- Traffic/Pedestrian Safety
- Utility Coordination
- Grading/Engineering Standards
- Low Impact Development (LID) opportunities
- Garbage/Recycling
- Anti-Graffiti techniques
- Appropriateness of mailboxes adjacent to Town parks
- Coordination of mailbox installation with Town projects

#### City of Hamilton v. Canada Post

Litigation between Hamilton and Canada Post is underway in the Ontario Superior Court in Hamilton, and will likely address the scope of federal powers in relation to mail delivery and the ability of municipalities to regulate such powers. In that matter, under its own by-law recently enacted (April 15) to address the placement of Canada Post community mailboxes, Hamilton has sought to impose the condition on Canada Post to stop work on the placement of community mailboxes in established neighbourhoods until regulations can be enacted by Hamilton. Canada Post has ignored the requirement of the by-law; in response, Hamilton sought a stop work order. Canada Post requested that the by-law be quashed, likely on grounds that the by-law is outside of municipal authority.

#### Federal Jurisdiction Over Community Mailbox Placement

Paragraph 5, section 91 of The Constitution Act, 1867 makes it clear that the Canadian government has exclusive legislative authority to regulate the postal service. As part of that authority, the federal government has passed the Canada Post Corporation Act. Section 19 of the Canada Post Corporation Act is also clear that only Canada Post has the authority to pass regulations to, among other things, govern the “design, placement, and use of any receptacle or device intended for the posting, insertion, reception, storage, transmission or delivery of mailable matter,” and provide for the “closure of post offices, the termination of rural routes and the termination of letter carrier routes.”

The federal Mail Receptacles Regulation passed under the Canada Post Corporation Act states (in section 3) that Canada Post “may install, erect or relocate or cause to be installed, erected or relocated in any public place, including a public roadway, any receptacle or device to be used for the collection, delivery or storage of mail.” Furthermore, in section 4 it states that “no person shall relocate or remove any receptacle or device referred to in section 3 without prior authorization by the Corporation [Canada Post]”.

It appears that there is no formal requirement for Canada Post to give notice to municipalities of the placement of community mailboxes in established neighbourhoods or to conduct open houses (unlike Industry Canada's minimum requirements for the placement of cell phone towers). However, Canada Post does attempt to work with municipalities when community mailboxes are placed in new subdivisions, such as providing warning clauses that certain lots will be in close proximity to community mailboxes. A requirement for more fulsome consultation would require action on the part of the federal government to amend legislation or promulgate regulations in order to change the role of municipalities in approving the location of CMBs.

#### Cases of federal-municipal jurisdictional conflict

Established jurisprudence regarding the role of municipalities to regulate the actions of the Crown or its agencies, even on municipal property, does not indicate a strong support for the argument that municipalities are able to exercise this power. What's more, in cases of a conflict between municipal and federal powers, the courts have repeatedly given paramountcy to federal legislation. As an "agent of Her Majesty in right of Canada" and an "Institution of the Government of Canada", Canada Post has been given substantial discretion by the courts with respect to the manner in which it chooses to fulfill its mandate.

Canada Post's position is based on a principle of Canadian constitutional law known as "interjurisdictional immunity", which may apply when a law of general application (such as this potential by-law) significantly impacts upon a federal undertaking, such as Canada Post. In certain circumstances, the federal undertaking becomes "immune" from the law of general application. As a result, if the doctrine of interjurisdictional immunity applies to Canada Post's property, then the Town's by-law would be inapplicable to it. The legal test for whether or not the doctrine of interjurisdictional immunity applies has been refined several times by the Supreme Court of Canada. There has been a great deal of uncertainty about how much impact a law of general application has to have on a federal undertaking before the federal undertaking becomes immune from the law of general application. It is expected that the court case currently underway in Hamilton will help to shed more light on this aspect of the role of municipalities in Canadian federalism.

- *City of Mississauga v. Greater Toronto Airport* 50 O.R. (3d) 641 [2000] O.J. No. 4086 Docket Nos. C31539 and C31557
  - The Court of Appeal for Ontario ruled in favor of federal immunity to municipal regulations in a case regarding Pearson Airport and municipal enforcement of the Building Code.
- *Re City of Nepean and Canada Post Corp.* (1986), 57 O.R. (2d) 297 ("City of Nepean")
  - The Ontario High Court ruled that Canada Post does not have a duty to provide door-to-door service to all of its customers, and may replace the service with community mailboxes.
- Varennes, Quebec, 1988
  - The city of Varennes attempted to block the installation of "Supermailboxes" on municipal lands in 1988 with an injunction, but was unable to prevent their installation by Canada Post.

### Town By-laws

Council has requested that staff return with a new by-law to regulate the installation of CMBs in Newmarket. Town staff reviewed existing by-laws to ascertain to what degree they would regulate the placement of community mailboxes on Town highways.

Currently, the Town has a road occupancy by-law in place (By-law Number 2009-32) which regulates the occupancy of the right-of-ways under the jurisdiction of the Town. This by-law provides that applicants wishing to occupy a portion of a highway, the definition of which includes boulevards, must complete an application, pay a fee, and receive a permit in order to undertake such works. This by-law is not an appropriate tool to regulate the location of CMBs, as it was designed to manage temporary road closures and occupancy and not a permanent installation of mailboxes. This is reflected in the requirements of the by-law, namely that a permit must be displayed on the occupied site at all times, that the applicant modify their insurance to include additional liability insurance for the Town, and other matters that are unlikely to be enforceable or reasonable to Canada Post.

While it may have been preferable for Council to have a by-law directly targeted at Canada Post, the requirement for the payment of a permit fee in such a by-law would be contrary to the Fees and Charges regulation (O. Reg. 584/06) to the Municipal Act, 2001, which states that a municipality does not have the power to impose a fee on a class of person that is comprised solely of the Crown. As Canada Post is a Crown corporation, a by-law directing a permit fee to be collected solely for Canada Post works would be outside of the Town's powers.

If Council wishes to impose a permit fee on Canada Post (as opposed to charging no fee for such permit), then a modification to the Fees and Charges by-law would be required, which does not single out Canada Post and instead treats it as just another person seeking to do work within the Town's boulevard. However, Council should be aware that this new by-law may fall within the prohibitions contained in section 14 of the Municipal Act, 2001, which state:

"14. (1) A by-law is without effect to the extent of any conflict with, (a) a provincial or federal Act or a regulation made under such an Act; or (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation. (2) Without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument."

### Enforcement of Proposed By-law

The Town of Aurora adopted at its May 26, 2015 Council meeting a by-law as is described above similar to the City of Hamilton. Communications between the Town of Aurora and the Director of Prosecutions with the Region of York indicated that if Canada Post were to place community mailboxes in contravention of the Town of Aurora's new by-law regulating the placement of mailboxes, the Region would hold off on prosecution pending the City of Hamilton versus Canada Post court decision on the validity of the by-law. Town of Newmarket bylaw officers would similarly defer enforcement of an offence whose legality was under review by the courts until the question is resolved. With this in mind, the Town of Newmarket may wish to await the outcome of the Hamilton court case before proceeding with enacting new measures. This will also permit

additional time for staff to investigate how best to align the Town's by-laws with the City of Hamilton's By-law Number 15-091.

The other enforcement tool available is the issuance of tickets under Part 1 of the Provincial Offences Act. Part 1 tickets and the associated set fines are subject to approval from the Ontario Court of Justice. An application to the court may be made upon enactment of a by-law and may take several weeks for approval or may be denied.

#### Drafting of Proposed By-law

Council has the option to enact a by-law that regulates installation of community mailboxes (CMB). Such a by-law has been enacted in Hamilton and Aurora and can be adopted in Newmarket, although as discussed earlier in this report, the legality and enforceability of such a by-law is questionable. Such a by-law can attempt to establish standards for the location of CMBs, require Town approval of their locations, and establish a permit and fee process to be completed before CMBs may be installed.

Drafting a by-law to attempt to regulate the installation of CMBs will take a significant amount of effort by staff. While other municipalities have adopted much the same by-law that Hamilton has adopted, work would still be required to review the by-law and amend it for Newmarket's particular context. Namely, it would need to reflect Newmarket-specific road standards, sidewalk policies, technical standards related to by-laws and utility locations, and other existing by-laws. The by-law also would require extensive legal review, if for no other reason than that the City of Hamilton is a single-tier municipality with different powers in its jurisdiction than the Town of Newmarket has as a lower-tier municipality. Finally, adoption of such by-law would require public notice in advance of its consideration as required by the Town's Notice Policy regarding fees and charges.

#### Interim Strategies

In lieu of adopting a new by-law, the Town may consider expanding efforts to improve the consultation process by continuing to inform residents of the legal ability of Canada Post to proceed with the installation of CMBs, and working collaboratively with Canada Post to the greatest extent possible to influence locations of CMBs to ensure appropriate sites. Although Canada Post has not adopted every suggestion or request sent to them, they have proven amenable in some cases to feedback and changes to their plans. Town staff has reviewed all proposed sites in Town and provided feedback to Canada Post, leading to some changes. Consultation and engagement with residents is ongoing, and residents should be encouraged to continue to direct their feedback to Canada Post.

Example actions include placing a page on the Town website with a map of locations for community mailboxes, an explanation of the process underway, the Town's role, and contact information for Canada Post. Similarly, the Town could host a town hall event with appropriate communications materials, maps, and information on the proposed sites, and invite Canada Post to attend and speak with residents and receive feedback.

#### **BUSINESS PLAN AND STRATEGIC PLAN LINKAGES**

Appropriate response to the changing approach of Canada Post to mail delivery and the impact that CMBs will have on municipal operations and property supports the strategic direction of being Well Planned & Connected by ensuring that the Town is prepared for this change and engaged in the process with Canada Post.

## **CONSULTATION**

Consultation has taken place with staff from Legal Services, By-law Services, Engineering Services, and Planning Services. Staff also acknowledge the contribution of Town of Aurora staff from their research and writing on this same matter.

## **HUMAN RESOURCE CONSIDERATIONS**

Not applicable to this report.

## **BUDGET IMPACT**

### Operating and Capital Budgets (Current and future)

There are no immediate impacts from this report. However, if Council determines to establish a permit and review system for CMBs, substantial staff time and resources will be required to administer the system. Staff have already provided comments on the proposed site, but a more extensive process of developing design guidelines and inspection processes will increase the cost to the municipality. Some or all of this cost could be recouped through fees for the review of applications, if such fees are able to be levied. No estimate of the cost of such a program has been made at this time.

## **CONTACT**

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