



Council Report

For the Meeting of September 23, 2021

To: Council **Date:** September 16, 2021
From: Shannon Perkins, Manager, Bylaw Services
Subject: Revocation of a business licence – John Mueller dba I-Tow Group

RECOMMENDATION

That Council revoke the business licence number #8014 issues to John Mueller dba I-Tow Group.

EXECUTIVE SUMMARY

The City regulates businesses operating in Victoria through the issuance of business licences pursuant to its *Business Licence Bylaw* and specific regulations of certain specific businesses. John Mueller dba I-Tow Group is licenced to operate a tow truck business.

The City has received numerous complaints about the operations of I-Tow Group. Upon investigation it was determined that Mr. Mueller has been operating in contravention of the City's *Towing and Immobilizing Companies Bylaw*. A prosecution for the bylaw contraventions resulted in a guilty plea and an order directing Mr. Mueller to take steps to bring his operations into compliance with the bylaw. Further inspections have revealed that Mr. Mueller has failed to comply with the court order and continues to operate in a manner inconsistent with the City's bylaws.

Mr. Mueller's actions expose the public to the risk of excessive towing charges and abusive business practices. Therefore, on July 29, 2021, the Manager of Bylaw Services, in her role as the Licence Inspector, suspended the business licence pursuant to section 15(2) of the *Business Licence Bylaw* and is recommending that Council revoke the business licence pursuant to section 15(1) of the *Business Licence Bylaw*.

Mr. Mueller has a right to appear, either in person or by an agent, before Council to make representations or evidence. Council must consider submissions made on behalf of the licence holder before making its decision.

Revocation of a business licence requires a vote of at least two thirds of all Council members.

PURPOSE

The purpose of this report is to present evidence and information in support of a recommendation to revoke a business licence #8014 issued to John Mueller dba I-Tow Group.

BACKGROUND

The City regulates businesses operating in Victoria and, under the *Business Licence Bylaw* (Appendix A), every person carrying on a business, trade, or profession, is required to have a business licence. In addition, certain businesses are regulated through specific business regulation bylaws, including the *Towing and Immobilizing Companies Bylaw* (Appendix B).

One of the purposes of business regulation is protection of the public, minimizing nuisances and misleading business practices. In the context of the *Towing and Immobilizing Companies Bylaw*, Council has enacted specific regulations to prevent potential abuses and misleading business practices by imposing restrictions on towing (section 5) and charging of fees (section 8 and Schedule A). To ensure transparency and accountability, the bylaw also requires towing vehicles to be identifiable through display of business name and telephone number (section 16).

Failure to comply with City bylaws may result in prosecution and may also lead to a suspension or revocation of a business licence. A person may not lawfully operate a business in Victoria without a valid municipal business licence.

Specifically, section 15 of the *Business Licence Bylaw* authorizes revocation of a business licence if the operator is liable for contravention of a City bylaw related to the operation of the business in the last two years.

ISSUES & ANALYSIS

Public Complaints

On September 27, 2019 City of Victoria, Bylaw Services received a complaint from a member of the public about I-Tow. The complainant advised their vehicle was towed from a private lot on Cook Street. The complainant did not take exception to the tow, he realized he parked in contravention of the sign, however, it was the fact that they were denied the ability to retrieve their car that same day and was charged fees in excess of what was allowed under the schedule in the Towing and Immobilizing Bylaw, specifically a fuel surcharge of \$21.42.

As a result of this complaint, the following charges were brought against Mr. Mueller:

Count 1

On or about September 20, 2019, JOHN MUELLER dba 1-TOW GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and immobilizing Companies Bylaw No. 11-033.

Count 2

On or about September 20, 2019, JOHN MUELLER dba I-TOW GROUP, failed to ensure an employer or agent of the towing company was available 24 hours per day to release a vehicle, contrary to Section 12(1)(a) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 3

On or about September 20, 2019, JOHN MUELLER dba I-TOW GROUP, failed to immediately release a vehicle upon payment of the applicable towing and storage fees, contrary to Section 12(1)(d) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

On the November 20, 2019, City of Victoria Bylaw Services received another complaint against I-Tow. The complainant advised they parked their vehicle in a parking lot located on Store Street and when they came back, their vehicle was missing. They had no idea where it went and could not find no posted signs indicating what Towing company to call. They saw a unmarked red tow truck towing another vehicle away and stopped the driver to ask where their vehicle was. When they retrieved their vehicle from I-Tow impound lot, they were charged a fuel surcharge of \$21.42.

As a result of this complaint, the following charges were brought against Mr. Mueller:

Count 4

On or about November 15, 2019, JOHN MUELLER dba I-TOW GROUP, failed to have a business name and telephone number painted or otherwise permanently affixed to the sides of a vehicle used to carry on the business of towing or immobilizing improperly or unlawfully parked vehicle contrary to Section 16 of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 5

On or about November 15, 2019, JOHN MUELLER dba I-TOW GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

On November 23rd, 2019 City of Victoria Bylaw Services received another complaint against I-Tow by a member of the public about his vehicle being towed from the same parking lot on Store Street. The complainant said the lot was not properly signed by the tow company and there was a fuel surcharge on the invoice.

As a result of this complaint, the following charges were brought against Mr. Mueller:

Count 6

On or about November 23, 2019, JOHN MUELLER dba I-TOW GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 7

On or about November 23, 2019, JOHN MUELLER dba I-TOW GROUP, failed to prominently display a schedule of the fees which may be charged at each place of business and each lot where vehicles towed for being improperly or unlawfully parked are stored, contrary to Section 8(6) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Bylaw Investigation / Towing and Immobilization Companies Bylaw Compliance

On December 18, 2019, as a result of mounting complaints about the towing practices of I-Tow, police and bylaw conducted joint surveillance on the Store Street parking lot. A number of violations were observed and as a result, the following additional charges in a *Sworn Information* (Appendix C) were brought against Mr. Mueller as follows:

Count 8

On or about December 18, 2019, JOHN MUELLER dba 1-TOVV GROUP, failed to issue a proper written receipt including time and location of when and where a vehicle was connected to a towing vehicle, contrary to Sections 13(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 9

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP failed to have a business name and telephone number painted or otherwise permanently affixed to the sides of a vehicle used to carry on the business of towing or immobilizing improperly or unlawfully parked vehicles, contrary to Section 16 of the City of Victoria Towing and immobilizing Companies Bylaw No. 11- 033.

Count 10

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to maintain a sign at a storage lot owned or operated by the towing company that clearly and legibly states that there is no charge for the first hour of storage of a vehicle that was towed for being improperly or unlawfully parked, contrary to Section 10(2) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 11

On or about December 18, 2019, JOHN MUELLER dba I-TOVV GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 12

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 13

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to have a business name and telephone number painted or otherwise permanently affixed to the sides of a vehicle used to carry on the business of towing or immobilizing improperly or unlawfully parked vehicles, contrary to Section 16 of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11- 033.

Count 14

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to prominently display a schedule of the fees which may be charged at each place of business and each lot where vehicles towed for being improperly or unlawfully parked are stored, contrary to Section 8(6) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 15

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to issue a proper written receipt which includes the time and location of when and where a vehicle was connected to a towing vehicle, contrary to Section 13(1)(b) and (c) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 16

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to have a business name and telephone number painted or otherwise permanently affixed to the sides of a vehicle used to carry on the business of towing or immobilizing improperly or unlawfully parked vehicles, contrary to Section 16 of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 17

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 18

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to prominently display a schedule of the fees which may be charged at each place of business and each lot where vehicles towed for being improperly or unlawfully parked are stored, contrary to Section 8(6) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 19

On or about December 18, 2019, JOHN MUELLER dba I-TOW GROUP, failed to issue proper receipt including time and location of when and where a vehicle was connected to a towing vehicle, contrary to Section 13(1)(b) and (c) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

Count 20

On or about December 19, 2019, JOHN MUELLER dba I-TOW GROUP, charged fees other than or greater than the prescribed fee for towing of a motor vehicle that was improperly or unlawfully parked contrary to Section 8(1) of the City of Victoria Towing and Immobilizing Companies Bylaw No. 11-033.

The documentation in support of these charges can be found in the *Disclosure Package #1* (Appendix D).

Court Appearance

On April 9, 2021, Mr. Mueller made a court appearance to answer to the charges. Mr. Mueller plead guilty to counts 4, 6, 8,10 and 15 (*Record of Conviction Appendix E*).

Mr. Mueller and the City then entered into a *Consent Order* (Appendix F) intended to address issue of compliance with City regulations moving forward.

Provincial Court Order

To summarize, the Provincial Court Order required Mr. Mueller to do the following:

1. Within 6 months, pay fines in the amount of \$1250 to the City of Victoria
2. Within 30 days properly mark the name and telephone number of his business on each of his tow vehicles
3. Within 30 days, prominently display a schedule of fees at each place of business and each lot where towing occurs
4. Within 30 days, prominently display at the storage lot a sign stating no charge for the first hour
5. Within 30 days provide proof to the City of Victoria that the terms of the order were complied with
6. For one year, maintain compliance with the Towing and Immobilizing Companies bylaw

To date, Mr. Mueller has not fully complied with the court order as discussed below.

Bylaw Investigation / Court Order Non-Compliance

Affidavit

Conditions of the Court Order required Mr. Mueller to provide evidence of compliance by way of an affidavit. On May 7, 2021 an *Affidavit* (Appendix G) was received from Mr. Mueller and was found to be unsatisfactory as it did not establish compliance with the requirements to mark the tow trucks and erect proper signage at each of the tow lots he serviced and at all places of business as required.

Investigation

Bylaw Services initiated an investigation to verify compliance with the Court Order. Evidentiary documents can be found in the *Disclosure Package #2* (Appendix H.1 to H.15) for details of this investigation.

On July 2, 2021 Bylaw Officers attended to 675 Wilson Street, the address registered with the City of Victoria, but there was no indication a tow company was being operated from this address.

And online search of I-Tow lead to 1924 Store Street. There were I-Tow business signs but no other indication an active business was occurring. A schedule of fees was displayed but not prominently or clearly and the fees were not in compliance with Schedule A of the *Towing and Immobilizing Companies Bylaw*

On July 14 2021 a Bylaw Officer observed a tow truck owned by John Mueller operating in the McDonalds parking lot at 980 Pandora Avenue. The markings on the tow truck were not in compliance with the *Towing and Immobilizing Companies Bylaw* or the Court Order The name on the truck was VSS however John Mueller does business as I-Tow, his business licence is in that name as well as issued receipts and most business signs.

On July 14, 2021 a *Notice of Inspection* (Appendix I) for July 19, 2021 was emailed to Mr. Mueller.

On July 15th, 2021 Bylaw Officers spoke to Mr. Mueller by telephone and were advised his new place of business was now 760 Queens Avenue. Officers attended to the Queens address with

the purpose of serving a notice of inspection, however no one was on site to serve. Mr. Mueller was advised of the inspection date on a subsequent phone call.

It was verified by Bylaw Officers that 760 Queens is zoned “C1-N-Q” and towing does not qualify as a permitted use under the *Zoning Regulation Bylaw* (Appendix J) and the use of the property as such is an offence under s. 16(1).

Inspection

On July 19 officers returned to 760 Queens for the purpose of conducting a business licence inspection, however, there were no tow trucks or staff on site. Mr. Mueller was contacted by phone and indicated he would not be attending for the purpose of the inspection, referred the officers to his lawyer and claimed harassment. Photos were taken from the outside of the property only.

Signage was present but was not compliant with the court order or *Towing and Immobilizing Companies Bylaw* in the following ways:

1. The fees sign was partially blocked and not clearly visible and not prominently displayed.
2. The fees were inconsistent with Schedule A of the bylaw
3. Inspection of the tow fleet did not occur as they were not present

Police Investigation

On July 23, 2021 the Victoria Police responded to a complaint to McDonalds at 980 Pandora Street for a dispute between an I-Tow driver and another person. The dispute was in relation to whether a drop fee should be paid in relation to a tow.

Police noted a tow truck with the letters VSS and a phone number 250-383-1155 – there were no markings indicating that the tow truck was being operated by I-Tow. The signs in the lot indicated I-Tow patrolled the lot and displayed a different number 250-383-4869. There were 5 I-Tow signs on the lot, 3 with the 1924 Store Street address, 1 with a 515 Pembroke address and another with 675 Wilson Street. None of the addresses were the current correct address of 760 Queens Avenue. None of the signs contained the towing and storage fees. The business activity at this location with this vehicle were in contravention of the provincial court order and the towing and immobilization bylaw.

Notice of Suspension

Based on the growing number of new violations of the provincial court order and the *Towing and Immobilizing Companies Bylaw*, pursuant to section 15 (2)(c) and (d) of the *Business Licence Bylaw* Mr. Mueller’s business licence was suspended pending an application to council to revoke the business licence under section 15(1). (*Notice of Suspension* Appendix K)

New Charges

14 new charges were sworn against Mr. Mueller (*Sworn Information #2* Appendix L) and a trial date has been set for September 27, 2021.

As a result of continued and persistent non-compliance with the *Towing and Immobilizing Companies Bylaw* and the Provincial Court Order, the Licence Inspector believes that there continues to be a significant risk that Mr. Mueller, dba I-Tow Group, will engage in misleading business practices to the detriment of members of the public. Therefore, the Licence Inspector has suspended his business licence and is recommending to Council that it revoke business licence #8014.

Before making its decision, Council must give Mr. Mueller an opportunity to be heard and must consider any information or evidence that he may present in response to this report. A vote of at least two thirds of all Council members (i.e., at least six affirmative votes) is required to revoke a business licence.

OPTIONS & IMPACTS

Option 1 – Revoke the Business Licence (recommended)

Revocation of a business licence is a serious step as it effectively prohibits a person or a company from operating in Victoria. It may result in significant financial losses and, potentially, in inability to fulfil existing contracts or obligations. Therefore, it is not something to be done lightly.

In the present case, Mr. Mueller dba I-Tow Group has demonstrated a disregard for City bylaws and has overcharged owners of vehicles towed. Despite a prosecution for bylaw contraventions and entering into a consent order, he has continued to operate in contravention of City bylaws. This behaviour suggests that there is a significant risk that he will again engage in misleading and inappropriate business practices that place members of the public at risk.

Revocation of the business licence is authorized by the *Business Licence Bylaw* because Mr Mueller was liable, within the last two years, of contravention of a City bylaw regulating the conduct of his business, namely the *Towing and Immobilizing Companies Bylaw*.

Option 2 – Do Not Revoke the Business Licence

Council may chose not to revoke the business licence and give Mr. Mueller dba I-Tow Group another chance to bring his business operations into compliance with the City's business regulations.

This is a valid option if Council is of the opinion that either the contraventions of the bylaw were not sufficiently serious to justify revocation of the licence or that the risk to the public is not significant.

A decision not to revoke a business licence at this time does not preclude a possibility of future prosecution or other action (including a new recommendation for business licence revocation) if the business continues to operate in contravention of the bylaws.

CONCLUSIONS

In conclusion, Mr. Mueller dba I-Tow has committed multiple violations of the *Towing and Immobilizing Companies Bylaw* which contain rules set in place by Council for the protection of the public against unscrupulous business practices. Despite best efforts of the Bylaw Office to motivate Mr. Mueller to come into compliance with the laws, he seems determine to do the

opposite. For these reasons, it is recommended that Council immediately revoke Mr. Mueller's business licence #8014.

Respectfully submitted,

Shannon Perkins
Bylaw Manager

Report accepted and recommended by the City Manager

List of Attachments

- Appendix A Business Licence Bylaw
- Appendix B Towing and Immobilizing Companies Bylaw
- Appendix C Sworn Information #1
- Appendix D Disclosure Package #1
- Appendix E Record of Conviction
- Appendix F Court Order
- Appendix G Mueller Affidavit
- Appendix H Disclosure Package #2
- H.1 Tempest File_I-Tow
- H.2 Photograph_980 Pandora_I-Tow Signage_Goldsmith_20210910
- H.3 Photographs_760 Queens Ave_Compound_LUNDIN_20210716
- H.4 Statement_Goldsmith_John Mueller_I-Tow_210907 x2 CFS 179133
- H.5 Email_to I-Tow-Business license and 2 attachments_Goldsmith_20210907
- H.6 Photographs_1924 Store Street_I-TOW_Goldsmith_210702
- H.7 Photographs_980 Pandora Ave_I-Tow Truck_Lockhart_20210714
- H.8 Photographs_760 Queens Ave_Inspections Photos_Lundin_20210719
- H.9 Photographs_515 Chatham St_I-Tow Signage_Goldsmith_210704
- H.10 Photographs_515 Chatham Street_Goldsmith_210718
- H.11 Photographs_675 Wilson Street_Goldsmith_210702
- H.13 Statement_Goldsmith & Lundin_John Mueller_I-Tow_210719_CFS 179133
- H.14 Statement_Goldsmith_John Mueller_I-Tow_210720 & 210729 Notice of Inspection
- H.15 Notice of Inspection I-Tow Towing Group 1924 Store Street_ including 2 email
- H.16 PoliceFile_980 Pandora_July23
- Appendix I Notice of Inspection
- Appendix J Zoning Regulation Bylaw
- Appendix K Notice of Suspension
- Appendix L Sworn Information #2