

**Consolidated Clause in Planning and Transportation Committee Report 3, which was considered by City Council on April 12, 13 and 14, 2005.**

**3****Comprehensive By-law Compliance Programme**

*City Council on April 12, 13 and 14, 2005, adopted this Clause without amendment.*

---

**The Planning and Transportation Committee recommends that Council adopt the staff recommendations in the Recommendations Section of the Report (February 14, 2005) from the Commissioner of Urban Development Services.**

Purpose:

To report back on the recommendations from Community Councils endorsed by City Council with respect to the Comprehensive By-law Compliance Programme.

Financial Implications and Impact Statement:

There are no financial implications as a result of this report.

Recommendations:

It is recommended that:

- (1) the recommendations from the September 3, 2004, report be adopted;
- (2) Schedule A of the September 3, 2004, report be replaced with Schedule A of this report;  
and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In October 2003, the City issued an RFP (No. 9166-03-7449) for an “Arbitrator/Mediator to Create an Alternative Dispute Resolution Operational Framework that Works within and Complements the Current By-law Enforcement Strategy.” The work of the consultant hired to develop the protocol and management training culminated in the development of the operational framework provided in Schedule A of the September 3, 2004, report from the Commissioner of Urban Development Services.

The report was considered and adopted by the Planning and Transportation Committee at its meeting of October 4, 2004. Subsequently, at its meeting of October 26, 27 and 28, 2004, City Council referred the report back to staff to make a series of presentations to the various Community Councils and to solicit these Councils' comments and recommendations. These presentations were conducted on January 18, 2005. The recommendations were forwarded to City Council for consideration at its meeting of February 1, 2 and 3, 2005. The report was then referred back to the Planning and Transportation Committee for consideration and recommendation to City Council.

Comments:

Schedule A has been amended with respect to the recommendations from the Community Councils, as follows:

- (1) a preamble has been added to the Schedule to clarify the purpose of the Comprehensive By-law Compliance Programme and to clearly state that the objective of the Programme is to achieve compliance with all City by-laws;
- (2) flow charts have been added under the description of each Phase, illustrating each of the steps in the enforcement process;
- (3) Councillors shall be informed of every ongoing case in their Ward, by Programme Phase, through a monthly report. This report shall be generated as soon as practicable, as it will be necessary to address a number of technical issues to be able to produce such reports; and
- (4) the high volume of complaints in any given Ward makes it impractical to consult the local Councillor on every case. The vast majority of cases are straightforward matters requiring a Phase I (informal resolution) or Phase III (traditional enforcement) approach. Any complaints originating from a local Councillor's office requiring a Phase II (formal mediation) or Phase IV (alternative enforcement) approach, however, would be subject to consultation with the respective Councillor. This requirement has been explicitly added as Clause 6 under Phase II and Clause 2 under Phase IV.

The lack of such requirements for Phase I and Phase III does not preclude, however, the local Councillor from advising staff of matters that he or she believes may be subject to formal mediation or alternative enforcement instead of traditional enforcement. Councillors would be able to keep track of these cases, as well as any others in their Ward, through the aforementioned monthly reports.

Conclusions:

The Comprehensive By-law Compliance Programme will introduce a dispute resolution process to the City's current enforcement strategy that is expected to streamline the resolution process for a number of property standard and maintenance issues. At the same time, the aim of the programme will continue to be to obtain full compliance with City by-laws and thus to ensure the integrity of the standards set out in those by-laws.

A number of recommendations from the various Community Councils have been incorporated into the proposed protocol, explicitly stating that compliance is the aim of the programme, providing greater clarity of the enforcement process under the programme, and giving local Councillors greater access and input into the process.

Contact:

Rudi Czekalla, Senior Policy Research Officer  
Municipal Licensing and Standards  
Urban Development Services  
Telephone: (416) 392-8096; Fax: (416) 392-0797  
E-mail: rczekal@toronto.ca

List of Attachments:

Schedule A: Comprehensive By-law Compliance Programme: Operational Framework.

---

Schedule A

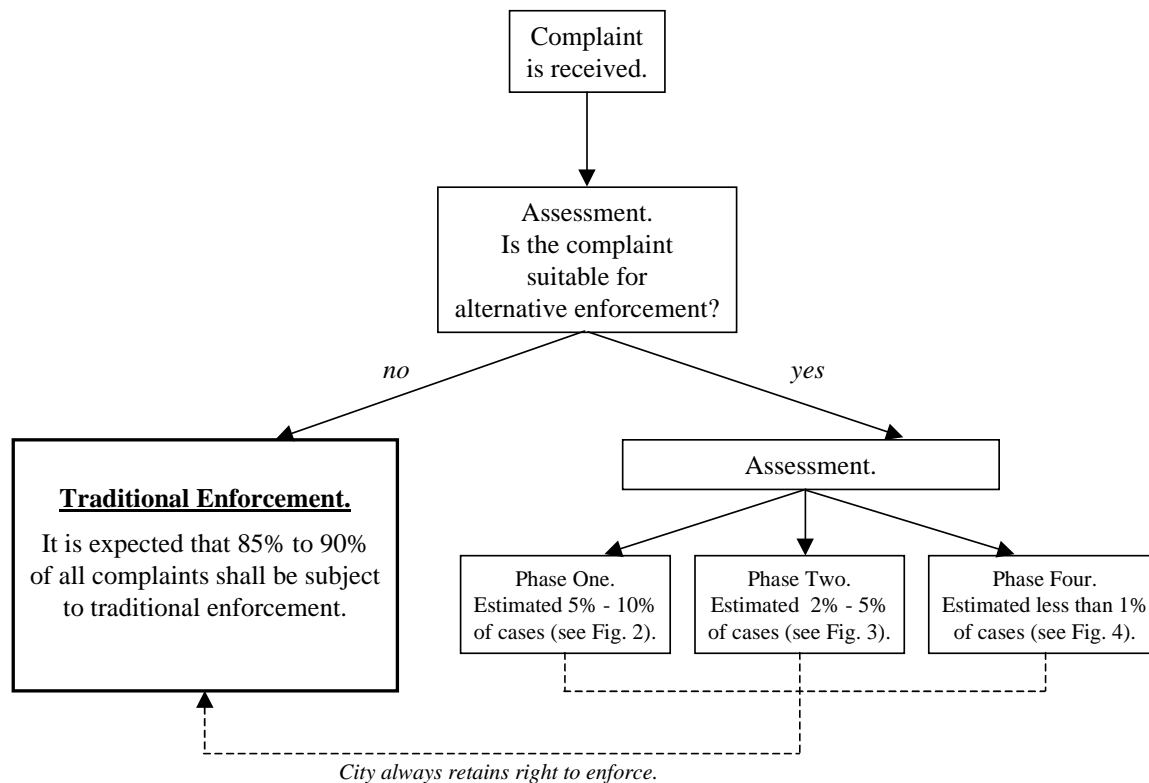
Comprehensive By-law Compliance Programme:  
Operational Framework

Preamble:

The Comprehensive By-law Compliance Programme is an enforcement protocol that provides both alternative approaches for ensuring effective and expedient compliance with all City by-laws, and a systematic mechanism through which related disputes or complaints may be addressed in the most efficient manner.

The Comprehensive By-law Compliance Programme approaches (other than traditional enforcement) are to be applied only in those situations in which traditional enforcement is determined not to meet the objectives of effective and expedient compliance (see Figure 1).

Figure 1: Applicability of Comprehensive By-law Compliance Programme.



Definition and Objectives:

This Operational Framework defines the objectives of the City of Toronto (City) By-law Compliance Programme.

The By-law Compliance Programme will be based on the following objectives:

- (1) the By-law Compliance Programme should reduce the number of situations that require traditional adversarial enforcement mechanisms and allow effective resolution of by-law compliance problems at any stage of enforcement;
- (2) the By-law Compliance Programme should use, and be based on, criteria that will support the credibility and effectiveness of traditional prosecution and regulatory enforcement mechanisms where these tools are required;
- (3) the By-law Compliance Programme should achieve consistent results that support the goals of Municipal regulation and the specific standards established in by-laws of general application to the City or areas of the City;

- (4) the By-law Compliance Programme should:
- (a) reduce the risk of confrontation between neighbours;
  - (b) reduce the time and enforcement support efforts that citizens must make in order to ensure respect for municipal standards and acceptable conduct among members of a local community;
  - (c) address the underlying causes that often contribute to local disputes between citizens (i.e., lack of knowledge, poor communication, differing expectations or standards), to allow for more cost and time effective solutions to be implemented and better neighbourhood relations to be maintained;
  - (d) foster a sense of community responsibility and mutual respect in City neighbourhoods; and
  - (e) educate citizens about municipal standards and the responsibilities of owners and occupiers, and support diversion programmes that will assist in raising citizen compliance; and
- (5) the By-law Compliance Programme should not require any additional municipal resources than those already allocated to by-law implementation, including investigation and enforcement, but should allow resources to be re-focused into compliance and effective resolution;
- (6) the By-law Compliance Programme should not transfer additional caseload responsibility to managers who deal with enforcement matters, nor should it reduce efficiency or the ability of enforcement officers to manage and process their existing caseloads; and
- (7) the By-law Compliance Programme policies should be available to Councillors and City staff in a format that will allow them to educate citizens and individual constituents about the scope and benefit of the programme.

Each Phase of the Programme is illustrated in Figures 2 to 4.

---

Figure 2

Phase One: Informal Resolution

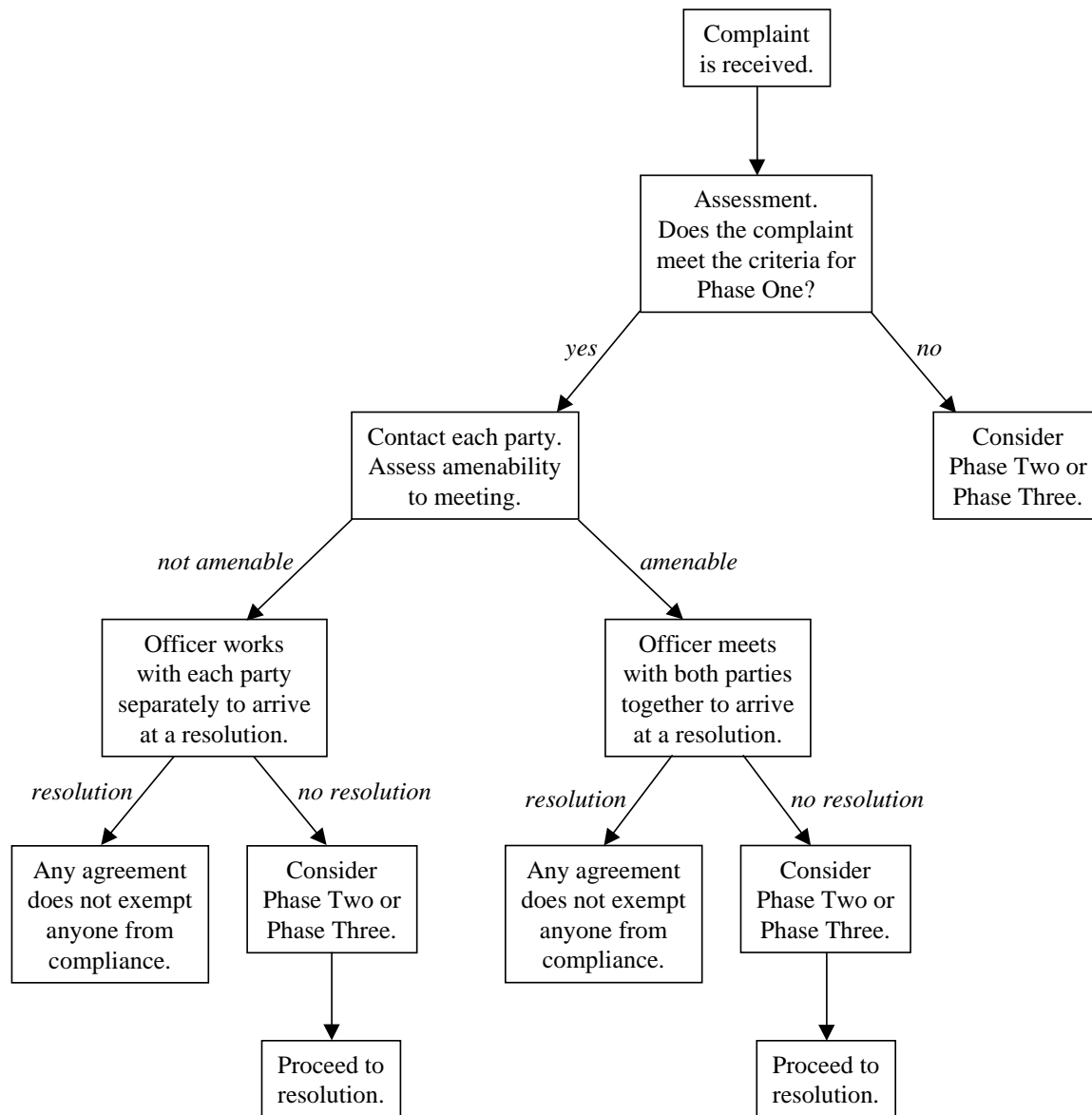


Figure 3  
Phase Two: Mediation

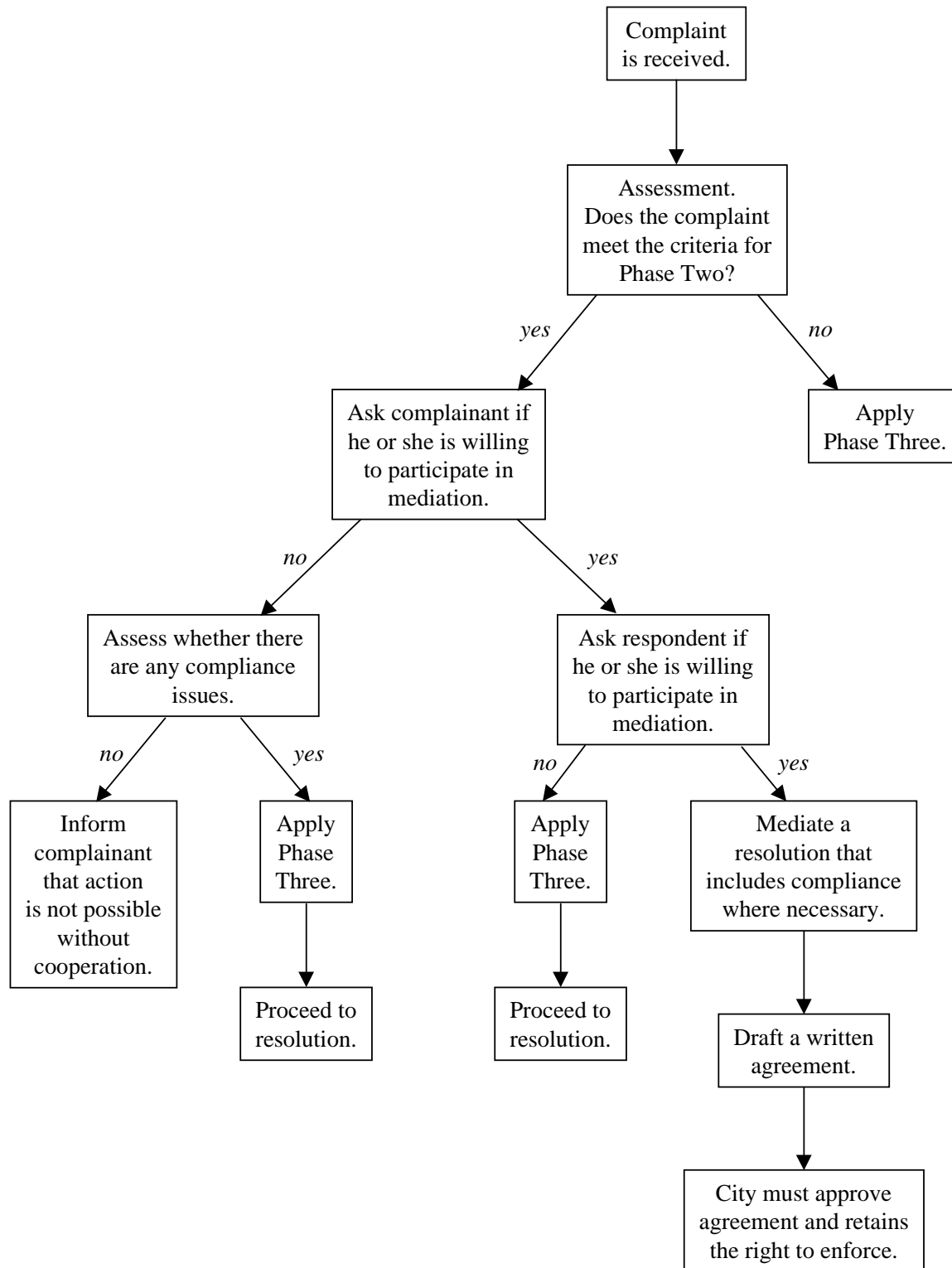
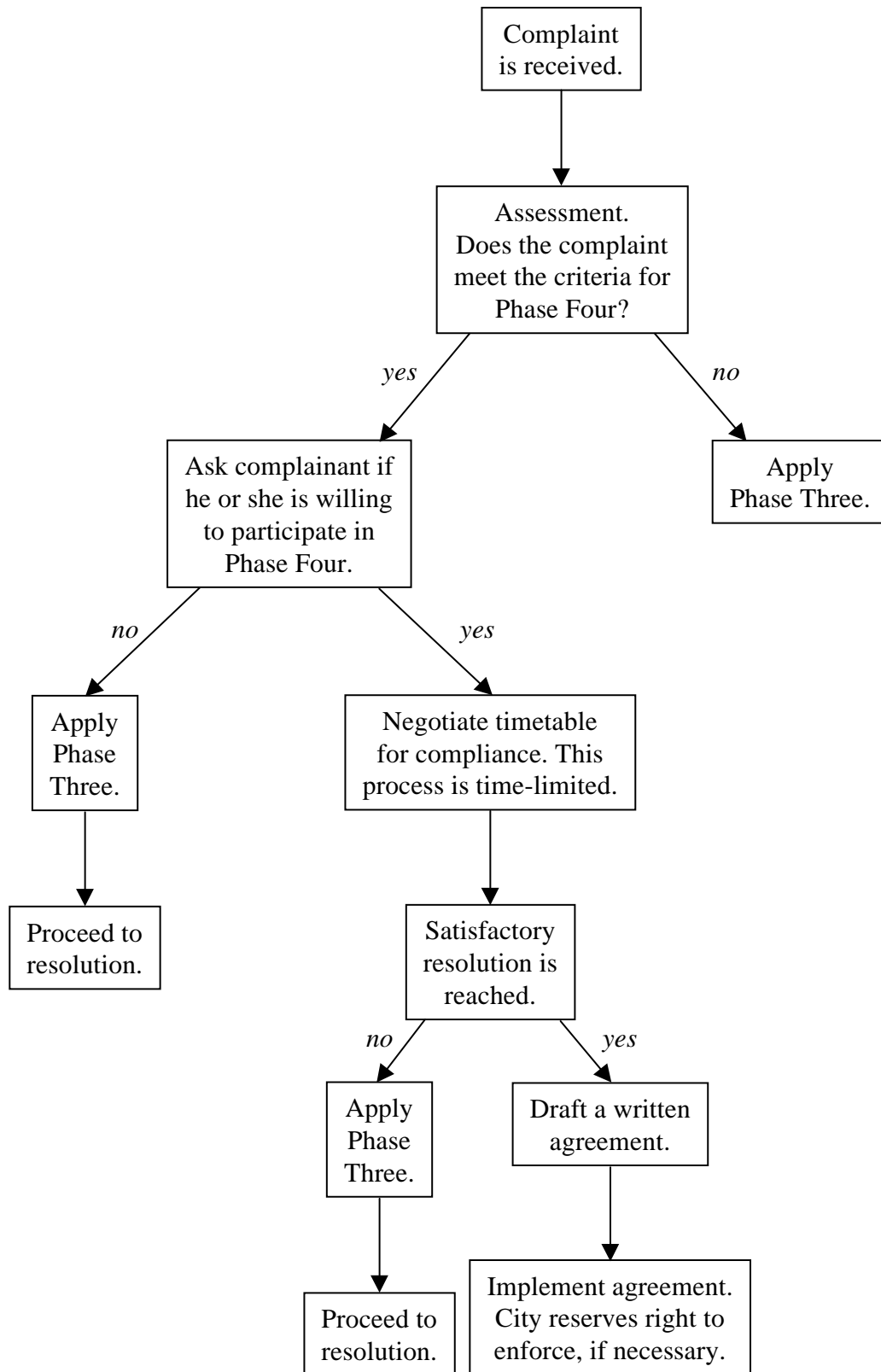


Figure 4 - Phase Four: Alternative Enforcement



**The Planning and Transportation Committee submits the communication (February 9, 2005) from the City Clerk:**

City Council on February 1, 2 and 3, 2005, referred this Clause back to the Planning and Transportation Committee for further consideration.

(Clause 3a of Report 7 of the Planning and Transportation Committee, entitled “Comprehensive By-law Compliance Programme”).

City Council on February 1, 2 and 3, 2005, referred this Clause back to the Planning and Transportation Committee for further consideration.

---

City Council on October 26, 27 and 28, 2004:

- (1) deferred consideration of this Clause to its meeting on February 1, 2005;
- (2) requested the Commissioner of Urban Development Services to make a presentation to each of the Community Councils on the Comprehensive By-law Compliance Programme; and
- (3) directed that all comments made at the Community Council meetings be forwarded to Council for consideration on February 1, 2005, through the Planning and Transportation Committee.

---

The Planning and Transportation Committee recommends that:

- (1) City Council adopt the staff recommendations in the Recommendations Section of the report (September 3, 2004) from the Commissioner of Urban Development Services; and
- (2) in the event a complaint originates from a Councillor’s office or proceeds through a Councillor’s office, the respective Councillor shall be consulted prior to Phase 2 or Phase 4 of the programme.

**The Planning and Transportation Committee submits the report (September 3, 2004) from the Commissioner of Urban Development Services:**

Purpose:

To summarize the progress of the Comprehensive By-law Compliance Programme, and to seek approval for the next stage of work.

### Financial Implications and Impact Statement:

Adoption of the recommendations contained in this report will have no financial impact in 2004; future years' financial impacts will be subject to the 2005 budget review.

The existing consulting contract, which has already been approved for this purpose in the 2004 Urban Development Services Operating Budget to the order of \$60,000, can be utilized to implement the pilot project and conduct training to an initial group of staff.

To fully implement the programme and proceed to the training stage for all 170 investigation and enforcement officers, additional costs of \$80,000 in each of 2005 and 2006 will be required to achieve basic knowledge and ability levels for all investigative staff and to implement advanced training, respectively.

The Chief Administrative Officer and Treasurer has reviewed this report and concurs with the Financial Impact Statement.

### Recommendations:

It is recommended that:

- (1) the Comprehensive By-law Compliance Programme, as outlined in Schedule A, be adopted in principle;
- (2) the development of an implementation model, as outlined in Schedule B and subject to final approval by Council, be approved, subject to Recommendation (3);
- (3) funds totalling \$80,000 in both 2005 and 2006 for basic and advanced training, respectively, for all investigative staff be considered through the 2005 budget process, and that this report be forwarded to the Budget Advisory Committee budget meetings;
- (4) the Commissioner, Urban Development Services, report to the Planning and Transportation Committee, after the first phase of full-scale implementation, on the effectiveness of the programme; and
- (5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

### Background:

In October 2003, the City issued an RFP (No. 9166-03-7449) for an "Arbitrator/Mediator to Create an Alternative Dispute Resolution Operational Framework that Works within and Complements the Current By-law Enforcement Strategy." This report summarizes the work to date on this project and seeks approval for the next stage of work.

As a result of input from the consultant regarding the City's goals and effective design possibilities for the programme, the project has evolved from what was originally contemplated. The current proposal is more comprehensive in scope, and more integrated into the City's existing enforcement structure, and therefore accomplishes the City's goals more thoroughly than the original concept.

The Operational Framework is called the City of Toronto's Comprehensive By-law Compliance Programme. The By-law Compliance Programme is intended to improve the City's ability to respond to the following concerns about the enforcement mechanisms that are currently available:

- (a) the City appears to expend a disproportionately large volume of its municipal resources, yet can rarely achieve fully satisfactory results when dealing with minor neighbourhood annoyances and similar problems that do not trigger public health and safety concerns;
- (b) the City does not have an effective non-adversarial dispute resolution process to respond to intermediate level compliance problems; and
- (c) the City is constrained in the remedies it can pursue to effectively respond to significant and complex problems covering multiple jurisdictions, departments or levels of authority.

Each of these problems arises out of the strictness of legal process. For example, the need to ensure adequate evidence is available to support a conviction means that noise complaints may require numerous occurrences and significant documentation before they can be prosecuted with a high chance of success. For a citizen, the problem may be far more annoying than the evidence may suggest, and the enforcement officer's explanation of evidentiary problems may make the City seem disinterested or create disrespect for enforcement in general.

At the other end of the scale, limitations on jurisdiction may mean a problem that includes breaches of public safety – such as an overcrowded rooming house – cannot be effectively resolved even if the breaches of the code are successfully prosecuted. The tenants may be forced to vacate the housing while City and owner resources are spent on enforcement; the consequences and underlying problems are not dealt with in a timely manner and the resources available to deal with the actual problems are reduced.

These problems do not mean, however, that traditional enforcement through the court is not necessary or appropriate. The need to establish common standards, the need for respect of municipal jurisdiction and the need to have effective deterrents for breaches of public health and safety requirements all point to maintaining an effective traditional enforcement mechanism when necessary. The flexibility and efficiency of negotiated or mediated solutions to particular problems operates most effectively against the backdrop of the formal legal enforcement process.

In the course of developing the Operational Framework, the Department took the opportunity to respond to a Council motion to investigate the concept of providing educational sessions to property standards and maintenance offenders, otherwise referred to as "Beauty School".

### Comments:

The City deals with by-law breaches or alleged breaches in about 35,000 separate matters annually. Some matters are discovered as a result of receiving complaints from citizens, others as a result of regular inspections. There are also numerous other inspections and by-law review mechanisms that are not dealt with at first instance by enforcement officers.

About 90 per cent of enforcement matters are dealt with prior to legal proceedings of any form (court or tribunal), and are resolved with varying degrees of effort by enforcement officers. Up to about ten per cent of these matters will go to court, and about ten – fifteen matters annually may result in costly, time consuming, and uncertain court proceedings such as injunctions.

Enforcement cost estimates from only two districts of the City, comprising ten of the most significant properties for enforcement activity, show a direct cost of approximately \$800,000 by the City's by-law enforcement unit alone. When estimates of the direct police and fire inspection and enforcement costs are added, the total is close to over \$900,000. The raw data for these estimates is not formally recorded, so the estimates reflect best guesses.

Despite weaknesses in gathering formal data, the estimates accord well with the general perception of the volume of investment the City makes in "problem properties". Even without adding similar properties from the remaining City districts, this relatively small number of properties consumes a significant portion of enforcement resources.

Conversely, in matters as minor as fence height violations for instance, there is even less hard data to support the general perception of the weaknesses of the system in dealing with minor annoyances. There is anecdotal data, and the complaints that councillors, department heads and inspectors hear on a day-to-day basis, but before now, no formal accountability and data measurement of either a qualitative or quantitative nature has been undertaken. More sound measurement is one of the recommendations of this report.

In light of the significant resources required to manage these issues, along with the perception of dissatisfaction, the By-law Compliance Programme seeks to minimize the cost of intervention and simultaneously raise the substantive effectiveness as well as the perception of effectiveness of by-law enforcement mechanisms.

The City has already approved a limited programme and expenditure to implement a mediation programme for by-law enforcement. The following sections set out the comprehensive model and the recommendations for implementing the model.

### Process:

The By-law Compliance Programme streams matters so that they have the greatest chance to be effectively resolved in a manner that will maintain respect for municipal regulation and standards, while expending the minimum necessary municipal resources.

While the By-law Compliance Programme strives to achieve flexibility and mutually agreeable resolutions where possible, it is also designed to minimize some of the inherent risks in such programmes, which include the risk of inconsistent application and lost time if the negotiation is unsuccessful.

The programme works by streaming matters into one of four phases.

Phase One, Informal Resolution, explicitly allows matters that are annoyances (rather than threats to health and safety) to be dealt with directly by the enforcement officer. For issues such as fence height disputes, minor noise complaints, minor property maintenance problems, and so on, the enforcement officer may meet with the alleged violator, negotiate a solution if possible, or may bring the complainant and violator together in an informal meeting where the issue is discussed and a resolution fashioned (if possible) that is agreeable to all parties, including the enforcement officer. This Phase may simply formalize the existing practice of some officers, but for others there may be a need for a structure, training in dispute resolution methods and communication techniques, and guidance on assessing cases and potential remedies that may not involve enforcement. This Phase also requires safeguards so that traditional enforcement may be pursued if necessary.

This Phase should allow low-level disputes to be resolved promptly and efficiently, without creating risks for participants. Effective dialogue may also allow neighbours to forge effective relationships and common standards, building community dialogue at the citizen level, eventually reducing reliance on enforcement officers to manage disputes that neighbours should be able to discuss and resolve directly.

Phase Two, Mediation, deals with disputes that have a limited scope, but in which relationships have broken down among neighbours, so that a more formal mediation structure may be necessary to manage more entrenched conflicts. This level would not typically involve matters in which there are issues of public health and safety. There may be difficulty making judgements as to whether Phase One or Phase Two should be available, or whether traditional enforcement is appropriate. In such situations, a managerial review process will be implemented. The managerial review will ensure that suitable cases are appropriately identified, allow the enforcement officer to take a lead role in maintaining the City's standards (since the mediator will be a supervisor or manager), and ensure settlements are reviewed and approved at the proper level of authority.

Mediation is the facilitated negotiation of a settlement between disputing parties. Neighbourhood members may be able to participate more effectively with a City official, or City-sanctioned official as mediator. The goal of mediation will be not only to resolve the dispute but also to allow community members to build more effective community dialogue. City expertise on substantive by-law issues will be useful to help community members to understand standards and norms for the neighbourhood without feeling evaluated or criticized. If used effectively, this process may, over time reduce the amount of conflict in a neighbourhood and allow it to manage its own conflict more effectively.

The Third Phase, Traditional Enforcement, will remain available for those matters that cannot, or should not be streamed into less adversarial processes. It is critical to maintain these traditional enforcement resources in order to maintain standards and credibility, to ensure parties understand

the risk of non-compliance. The goal of the Compliance Programme, however, is to reduce the number of cases for which Phase Three is necessary and to allow for alternatives when Phase Three would not be effective. To the extent possible, enforcement officers should look for opportunities to use Phases One, Two and Four instead of Phase Three.

The Fourth Phase: Alternative Enforcement, is intended to deal with those situations where there is a dangerous or emergency situation, liability is blatant or is not being contested, and enforcement will not allow practical and effective remedies or may take too long to correct the situation. In this Phase, violators will be expected to acknowledge responsibility and agree that enforcement will be possible on consent, therefore allowing the City to concentrate its efforts on remedies and the violator to focus its resources on achieving compliance. The City will not be faced with prejudice to its enforcement opportunities if there is a delay, and the violator will not gain any advantages to its legal position because negotiations over settlement have taken place; mediation and negotiations would be conducted by a District Manager, or Divisional Director.

#### Beauty School:

Council at its meeting of May 18, 19 and 20, 2004 referred a motion to the Commissioner of Urban Development Services to investigate the concept of providing educational sessions to property standards and maintenance offenders, otherwise referred to as “Beauty School”. This concept has been incorporated into Phases One, Two and Four of the City’s proposed Comprehensive Bylaw Compliance Programme (see Schedule A – Operational Framework). The Programme’s Operational Framework provides that an alleged offender may be asked to participate in a programme of education administered by the City and designed to raise awareness about municipal standards, enforcement, and liability.

#### Implementation:

If Council accepts this approach, documentation in addition to the Operational Framework will have to be completed.

Additionally, staff skill, resources and training needs have to be assessed. Training plans will have to be developed, training effectiveness measures implemented, and evaluation methods and testing designed to measure the programme’s effectiveness will have to be put in place. Baseline data should be collected and key performance indicators identified.

This report was prepared in conjunction with Stitt Feld Handy Houston, a consulting firm specializing in alternative dispute resolution and mediation.

#### Financial Impact:

Adoption of the recommendations contained in this report will not require any additional budgetary allocation for the 2004 fiscal year. Full implementation of the programme will require funding for staff training of \$80,000 in 2005 and an additional \$80,000 in 2006. This expenditure of less than \$1,000 per employee over two years will provide employees with a solid grounding in case management and dispute resolution techniques that can be applied immediately to their work.

The Comprehensive By-law Compliance Programme shall be monitored over the course of its implementation and a report with respect to progress made shall be brought forward to the Planning and Transportation Committee within one year of implementation of Phase One of the programme.

The monitoring shall allow the City to measure the effectiveness of the programme in dealing with the most dangerous, significant, resource consuming problems that City by-law inspectors face, as well as its effectiveness in responding to the nuisance problems that appear endemic to City life but do not create threats to public health or safety in the short term. Currently, there does not seem to be comprehensive data available regarding the use of City resources on a per case basis. However, there is clearly an opportunity for significant reductions in the number of cases that move into the traditional enforcement stream, and therefore a significant reduction in the resources applied to particular cases. Although savings may be relatively small in each case, the cumulative savings of even a few hours per case will translate into a much more effective use of resources; in turn, more effectively used resources should create an improved climate for compliance, based on providing the appropriate response to situations. A reduction in resources necessary per case should allow staff to process more cases in the available time, potentially reducing backlogs, decreasing response times, or reducing overtime or other unbudgeted costs.

Part of the recommendation from this report is to assist in gathering the data to support better measures of the effectiveness of the enforcement officers; measures of effectiveness may include items such as the average case expenditure of resources, the gross number of cases resolved, and a review of the relationship between the number of files opened and closed, and the number of prosecutions in various years.

#### Conclusions:

The Comprehensive By-law Compliance Programme will introduce a dispute resolution process to the City's current enforcement strategy that is expected to streamline the resolution of a considerable number of property standard and maintenance issues. At the same time, it will still ensure the integrity of the standards set out in the City's property standard and related by-laws.

Implementation of the Comprehensive By-law Compliance Programme will require gathering performance data, establishing target cost reductions, developing an internal and external communications plan, staff training, and developing appropriate assessment tools. The anticipated benefits should exceed the required expenditures and lead to a considerably more efficient and effective response to by-law compliance issues by the City.

The pilot phase of the programme will be completed within the budgetary allocations made for 2004. Full implementation of the programme, which consists of training 170 investigations officers, will require an additional \$160,000 over two years.

#### Contact:

Rudi Czekalla, Senior Policy Research Officer  
Municipal Licensing and Standards  
Telephone: (416) 392-8096; Fax: (416) 392-0797  
E-mail: rczekal@toronto.ca

List of Attachments:

Schedule A: Operational Framework

Schedule B: Implementation Model

---

Schedule A

Comprehensive By-law Compliance Programme  
Operational Framework

Definition and Objectives:

This Operational Framework defines the scope and objectives of the City of Toronto (City) By-law Compliance Programme.

The By-law Compliance Programme is intended to address the following problems:

- (a) relatively minor by-law violations can often consume significant municipal resources before they are resolved, and the resolution may achieve only limited or unsatisfactory results. Dissatisfaction arises, among other causes, from the large amount of time and effort that is required to manage continuing low-level annoyances and the limited range of remedies that may be available by following traditional court-based enforcement mechanisms;
- (b) a wide range of conflicts that may be technical infractions of municipal standards could be more effectively resolved by aiding disputants to improve their relationships with each other and the neighbourhood, rather than by punishing them; however, traditional court enforcement mechanisms do not create an effective atmosphere for neighbourhood building and limit resolution options among neighbours; and
- (c) more serious infractions may cover only liability issues, while a serious problem may require a comprehensive and integrated set of actions to be effectively resolved.

The By-law Compliance Programme will be based on the following objectives:

- (1) the By-law Compliance Programme should reduce the number of situations that require traditional adversarial enforcement mechanisms and allow effective resolution of by-law compliance problems at any stage of enforcement;
- (2) the By-law Compliance Programme should use, and be based on criteria that will support the credibility and effectiveness of traditional prosecution and regulatory enforcement mechanisms where these tools are required; and
- (3) the By-law Compliance Programme should achieve consistent results that support the goals of Municipal regulation and the specific standards established in by-laws of general application to the City or areas of the City.

- (4) The By-law Compliance Programme should:
  - (a) reduce the risk of confrontation between neighbours;
  - (b) reduce the time and enforcement support efforts that citizens must make in order to ensure respect for municipal standards and acceptable conduct among members of a local community;
  - (c) address the underlying causes that often contribute to local disputes between citizens (i.e., lack of knowledge, poor communication, differing expectations or standards), to allow for more cost and time effective solutions to be implemented and better neighbourhood relations to be maintained;
  - (d) foster a sense of community responsibility and mutual respect in City neighbourhoods; and
  - (e) educate citizens about municipal standards and the responsibilities of owners and occupiers, and support diversion programmes that will assist in raising citizen compliance.
- (5) the By-law Compliance Programme should not require any additional municipal resources than those already allocated to by-law implementation, including investigation and enforcement, but should allow resources to be re-focused into compliance and effective resolution;
- (6) the By-law Compliance Programme should not transfer additional caseload responsibility to managers who deal with enforcement matters, nor should it reduce efficiency or the ability of enforcement officers to manage and process their existing caseloads; and
- (7) the By-law Compliance Programme policies should be available to Councillors and City staff in a format that will allow them to educate citizens and individual constituents about the scope and benefit of the programme.

#### Operational Guidelines:

There are four distinct phases to the By-law Compliance Programme. Phases One and Two will typically occur prior to traditional enforcement by formal charges and court hearings. Phase Three is the traditional enforcement mechanism route in the event Phases One and Two are unsuccessful or inappropriate. Phase Four will generally require at least a notice of violation and may often take place after charges have been brought and an appearance before the court has occurred. Given the range of potential situations and participants, however, the choice between Phase One or Two, Two or Three, or the choice between Phase Three or Four, may require the exercise of professional judgement by the appropriate manager or management team. A summary of each phase is below, followed by more detailed operational guidelines.

Phase One permits direct and effective dispute resolution by enforcement officers. In appropriate situations, enforcement officers will have the authority to respond to complaints, speak to the parties involved, and assist them in developing effective solutions that do not require formal enforcement. These situations will be documented with a summary report for review and statistical analysis.

Phase Two permits mediation of those disputes that require more formalized intervention among neighbours when there is an alleged violation of municipal by-laws. The mediator will be a City representative who will facilitate discussions to allow parties to come to a mutually agreeable resolution of the issue, subject to City approval of any settlement that affects any issue directly or indirectly within City jurisdiction.

Phase Three will capture the traditional enforcement mechanisms, and is not a change in policy or approach. This Phase is included to ensure that the compliance programme is fully and efficiently integrated into the inspection and enforcement structure of the City.

Phase Four permits negotiated settlement of compliance terms, and may include effective additional and alternative obligations to complement those that would typically be available through court enforcement. A pre-condition to participation in Phase Four is admission of liability for by-law breaches in a form satisfactory to the City.

Phase One: Informal Resolution:

- (1) by-law enforcement officers may consider whether situations they are investigating for possible by-law infractions would be suitable for informal resolution;
- (2) informal resolution is available for those situations where there has been a complaint by another local resident or residents concerning a possible by-law breach, and any or all of the following criteria apply:
  - (a) the complaint regards situations that have no implication for public health or safety;
  - (b) the violation is minor, technical, unlikely to result in a material penalty, not difficult or time-consuming to enforce, or for other similar reasons appears to be an unsuitable matter to which to allocate extensive formal enforcement resources; and
  - (c) the scope of issues involved is narrow and able to be fully considered by those affected without the need for significant expertise or representation, and without the need for significant investments of time.
- (3) in those matters selected for informal resolution, the enforcement officer shall separately contact the complainant and the party who is the subject of the complaint. The officer will, through discussion only, assess the complainant's suitability for participation in the informal resolution process. In matters where the complainant does not appear concerned about the personality or attitude of the allegedly offending party, and the offending party appears open to dealing with the issue by discussion, the enforcement officer may convene a meeting of the parties and attempt to facilitate a mutually acceptable resolution consistent with the City's by-law enforcement objectives;

- (4) where either party is not amenable to a meeting, or the officer thinks that a meeting would be unnecessary or not constructive, the officer may try to determine separately what might constitute a mutually acceptable resolution consistent with the City's by-law enforcement objectives, and give the parties the opportunity to endorse such a resolution;
- (5) in the event a mutually agreeable resolution is reached, the enforcement officer will consider and implement, or arrange for the implementation of any steps that are appropriate for the City to take to support the resolution reached by the parties;
- (6) the parties to this process shall be advised before entering into any agreement between them, that nothing they agree to will inhibit or affect in any way, the ability of the City to enforce its by-laws in the manner it considers proper. They will also be advised that their agreement does not result in any exemption from or limitation on any by-law;
- (7) in the event there is no complaint, and the enforcement officer discovers in the course of his or her duties a violation of the type that fulfils the criteria of this part, except that there is no complainant, the officer may negotiate directly with the party in breach of a by-law, an appropriate resolution that is consistent with the general standards of the City. In this situation, there shall be no agreement entered into by the City, and no commitment to exempt the infractions from the operation of municipal by-laws in the future;
- (8) as part of an agreement, an alleged offender may be asked to participate in a programme of education administered by the City and designed to raise awareness about municipal standards, enforcement, and liability;
- (9) in the event there is no agreement, the officer may make such decision as considered appropriate to ensure the credibility of general City standards and to maintain civility and respect among neighbours. These steps may include use of Phase Two of the compliance mechanism; and
- (10) all matters for which Phase One is followed will be briefly summarized in a report filed for retention and statistical analysis.

Phase Two: Mediation:

- (1) the City will have final authority to determine the complaints that (and participants who), will be eligible for mediation. The criteria for eligibility shall be as set out below;
- (2) disputes relating to matters of pressing public urgency, public health, and public safety, or matters in which the City has concerns about the attitude and integrity of the potential participants (for example, because of a history of violent conflict, breach of previous agreements, violations or continued avoidance of penalties, work orders, or other enforcement mechanisms) will not generally be eligible for mediation. Approval of exceptions to permit use of the Mediation process shall be granted only by the appropriate management team members, and shall be subject to review and endorsement by the Commissioner responsible generally for by-law enforcement matters.

- (3) the by-law enforcement officer shall make the first assessment of eligibility for mediation. Decisions on eligibility shall be based on the following criteria:
  - (a) is there a dispute between two or more neighbours in a community?
  - (b) are some of the issues in dispute subject to regulation by City by-laws?
  - (c) are the issues under consideration relatively minor in scale, with no impact on public health and safety, and only a minor impact on affected citizens?
  - (d) are the persons or properties being complained about free of any significant history of continuing infractions or other indicators of disrespect for compliance with municipal regulation? and
  - (e) is any person being complained about free of any history of violence or other activity causing fear or intimidation to his or her neighbours or City officials?
- (4) if the answer to each of the above questions is yes, then the enforcement officer may contact the complainant(s) to advise of the potential to resolve the issues through mediation;
- (5) if the answer to any of these questions is no, but the enforcement officer is satisfied that any concerns can be or have been dealt with so that a negative answer is not a bar to participation, and this assessment has been endorsed in writing by the appropriate manager, then the enforcement officer may contact the complainant(s) to advise of the potential for mediation;
- (6) if the complainant is willing to participate in mediation, then the respondent or respondents may be contacted and advised of the potential for mediation. If the respondents are also willing to participate, mediation may commence;
- (7) all parties to the mediation process will sign and endorse an Agreement to Participate in Mediation. Multiple parties may participate and take separate positions in the mediation process;
- (8) mediation will take place prior to formal enforcement proceedings, but investigation work may continue independently of, or in conjunction with, mediation. The mediator will be the appropriate enforcement officer or manager, depending on the scope of matters in dispute and whether the enforcement work that has been completed renders the enforcement officer unable to appear neutral to all of the parties involved;
- (9) in the event of a settlement through mediation, the settlement shall be made in writing and filed with the City. The settlement may include requirements that the City establishes, including participation in City administered programmes of instruction on compliance, standards, and municipal authority for the parties;

- (10) the City will not be a party to any settlement, but must approve all settlements before they will be effective. Any settlement that is not approved by the City may not be relied on to defend or be used as a defence to the enforcement of municipal by-laws by the City;
- (11) approved settlements involving variances from municipal standards will be strictly limited to the immediate participants (e.g., current occupants or owners), and all parties to the settlement will agree in writing to the limitation of such variances. Any variances from City by-laws that are accepted as part of a settlement will be subject to such further approvals, if any, as may be required by other legislation;
- (12) if no settlement agreement is reached, the mediation is without prejudice to the rights and remedies of any participant to enforce or defend its rights;
- (13) a breach of a settlement agreement shall end all obligations or commitments among all parties, and rescind the City's approval of the settlement;
- (14) every settlement agreement shall include (and if omitted by oversight shall be deemed to include) a standard set of terms that acknowledge the City's authority and ability to enforce its by-laws without regard to the settlement agreement in the event that:
  - (a) the settlement agreement is breached;
  - (b) the parties to the settlement no longer own or occupy the affected premises;
  - (c) the parties to the settlement change in any manner any situation or condition governed by any variances approved as part of the settlement;
  - (d) there is a material change in standards applicable to the property as part of a general amendment to municipal standards; and
  - (e) in its sole discretion, the City considers there has been a material change in circumstances that makes continued approval of the settlement agreement inadvisable or inappropriate.
- (15) in the event the City decides, in accordance with the deemed provisions of paragraph 14 above, that it intends to enforce City by-laws despite the existence of an approved settlement agreement, the City shall provide the parties to the settlement with notice of its intention and an opportunity to make representations to the appropriate officer of the City prior to commencing enforcement. The amount and method of notice shall be as the City considers in its discretion to be appropriate in the circumstances while ensuring the health and safety of those potentially affected by its enforcement decision;

Phase Three: Traditional Enforcement:

- (1) in the event that a matter is not suitable for Phases One or Two or has not been successfully resolved through use of Phases One or Two, traditional enforcement mechanisms may be applied. Traditional enforcement means the bringing of charges against a person or entity in breach of municipal by-laws and the use of the court system to enforce compliance; and
- (2) in the event that traditional enforcement is used after Phase One and/or Phase Two has failed, nothing that occurred during those Phases shall be used as evidence by the City unless the evidence would otherwise be available or inevitably would be available as enforcement progressed. Additionally, if a person has completed partial compliance as a result of Phases One or Two, that partial compliance shall be acknowledged and the non-compliance that has been remedied shall not be the subject of a charge.

Phase Four: Alternative Enforcement:

- (1) disputes relating to matters of pressing public urgency, public health, and public safety, or matters in which the City has concerns about the attitude and integrity of the potential participants (for example, because of a history of violent conflict, breach of previous agreements, violations or continued avoidance of penalties, work orders, or other enforcement mechanisms) may be eligible for Alternative Enforcement;
- (2) there are three stages to the Alternative Enforcement Process:
  - (1) approval;
  - (2) negotiation; and
  - (3) implementation.

Approval:

A party seeking to use Alternative Enforcement must request permission to make use of the process. The City may in its absolute discretion grant or deny any such request. In order to be granted approval to enter the Alternative Enforcement process, the applicant may be required to provide sufficient assurances to the City, including, but not limited to, a formal written admission of liability, in a form satisfactory to the City prior to the commencement of the Negotiation stage. A party must also agree to a specific timetable for completion of the Alternative Enforcement process. If the request for Alternative Enforcement is not granted, the fact of the request and any admissions discussed will be considered “without prejudice” settlement discussions and will not be used by the City for enforcement purposes.

Negotiation:

If participation is approved and the pre-conditions have been fulfilled, the party and the City will enter into negotiations regarding steps that the party will take to resolve by-law infraction and related concerns of the City without the need for formal court proceedings.

A party seeking to use Alternative Enforcement may neither contest the validity of the alleged breach(es) nor raise defences to limit its potential liability as part of the negotiations.

The Alternative Enforcement negotiation shall be time limited, with a specific deadline established by the City and recorded at the outset of the negotiation (as set out above), in order to ensure that public health and safety and municipal regulatory requirements are not prejudiced. In the event no agreement is reached by the appointed time, the City in its discretion may pursue court enforcement on the basis of the admission of liability or may establish and record a new deadline.

In the event an agreement is reached on the appropriate outcome, the City will suspend court enforcement on the admitted infractions pending the complete and satisfactory implementation of the agreement. The City may continue investigation and other preliminary steps necessary for eventual court enforcement, including service of additional infraction notices, during any stage in Alternative Enforcement.

Any agreement entered into pursuant to Alternative Enforcement shall include (and if omitted shall be deemed to include) a standard term that acknowledges the City's authority and ability to prosecute for the breach(es) of its by-laws using the admission of liability in the event that the agreement is breached.

#### Implementation:

An agreement may include a schedule of tasks, deadlines, and security for performance, and may allow the City in the event of a party's default to undertake the prescribed tasks at the party's expense in addition to prosecuting the infraction(s). The agreement may also include a requirement to participate in City administered programmes of instruction on compliance, standards, and municipal authority for the parties.

Once the agreement is fully implemented, a record of completion shall be filed with the City. The record of completion shall be reviewed and approved by the City, at which time the breach(es) shall be considered remedied and enforcement complete. The City shall advise the party of its approval. The City may retain information related to the infractions, but the circumstances that gave rise to the original prosecution shall not be the subject of further proceedings except as evidence of prior infractions.

#### Conclusion:

These Phases provide a comprehensive approach to the assessment of by-law infractions. The use of Phases One and Two is encouraged, where possible and appropriate, in the hope that development of a community-based and supported approach to enforcement will foster better community relations and neighbourhood self-management, and raise the general standards of the City.

All situations not appropriate for Phases One and Two should proceed through Phases Three or Phase Four as appropriate. Phase Three is still likely to be used for the majority of cases in which serious infractions are alleged. Phase Four is likely to be limited to a relatively small

number of blatant and urgent violations that demand a firm, fast, and comprehensive response from the City. Phase Four should not be a default for cases that are merely awkward to prove, or in which the defendant is seeking to avoid liability.

The City hopes that it will be able to keep a significant percentage of infraction situations out of Phase Three, thereby having a positive impact on the City's allocation of resources, reducing the cost of maintaining compliance with City standards, and allowing the City to focus its resources on the most significant and pressing cases.

---

## Schedule B

### Comprehensive By-law Compliance Programme Implementation Model

The proposed implementation model will be designed to:

- (a) gather the data to allow by-law enforcement matters to be objectively measured in terms of the City cost and staff resources necessary to resolve them;
- (b) establish a target for reductions in cost and staff time by using Phase One, Phase Two, and Phase Four approaches in addition to current traditional (Phase Three) enforcement;
- (c) develop public and staff information and participation materials to support the Comprehensive By-law Compliance Programme;
- (d) conduct dispute resolution skills training, including basic mediation training with a limited number of enforcement officers and managers in order to implement a pilot of the programme;
- (e) develop assessment and evaluation tools for the Comprehensive By-law Compliance Programme, and assess and evaluate the pilot programme; and
- (f) report on and recommend expansion or revocation of the programme, including assessing further training requirements within the approved budget, after the evaluation is completed.

---

The Planning and Transportation Committee also considered a communication (June 28, 2004) from the City Clerk advising that City Council on June 22, 23 and 24, 2004, referred Item (j) entitled "Establishment of a Beauty School" to the Planning and Transportation Committee for further consideration.

---

Councillor Frances Nunziata, York South-Weston, appeared before the Planning and Transportation Committee.

**The Planning and Transportation Committee also submits the communication (January 24, 2005) from Toronto and East York Community Council:**

Recommendation:

The Toronto and East York Community Council recommends to the Planning and Transportation Committee that City Council adopt the report (September 3, 2004) from the Commissioner of Urban Development Services.

Background:

At its meeting on January 18, 2005, the Toronto and East York Community gave consideration to Council Clause 3 of Report 7 of the Planning and Transportation Committee titled "Comprehensive By-law Compliance Programme", which City Council, on October 26, 27 and 28, 2004 deferred consideration to its meeting on February 1, 2005, and, in the meantime, requested the Commissioner of Urban Development Services to make a presentation to each of the Community Councils on this matter and directed that all comments made by the Community Councils be forwarded to City Council on February 1, 2005, through the Planning and Transportation Committee.

Carlos Martins, Acting Director, Joe Luzi, Acting Manager and Joe Magalhaes, Acting Supervisor, Investigations, Municipal Licensing and Standards, Urban Development Services, made a Power point presentation.

**The Planning and Transportation Committee also submits the communication (January 19, 2005) from Scarborough York Community Council:**

Recommendations:

The Scarborough Community Council:

- (1) concurred, in principle, with the Planning and Transportation Committee Recommendation that the staff recommendations in the Recommendation Section of the report (September 3, 2004) from the Commissioner of Urban Development Services be adopted; and
- (2) requested the Commissioner of Urban Development Services to report to the Planning and Transportation Committee for its meeting of March 7, 2005 on:
  - (a) clarification of the purpose of the compliance by-law program such that it clarifies the intent of the usage of the program;
  - (b) the preamble clearly stating that compliance to all City by-laws is the ultimate intent; and

- (c) the revised policy include flow charts defining the clear steps along the way in by-law enforcement.

Background:

The Scarborough Community Council on January 18, 2004, received a presentation by Urban Development Services on the progress of the Comprehensive By-law Compliance Program.

**The Planning and Transportation Committee also submits the communication (January 21, 2005) from Etobicoke York Community Council:**

Recommendations:

The Etobicoke York Community Council recommended that the Planning and Transportation Committee:

- (1) be advised that:
  - (a) the Etobicoke York Community Council endorses Recommendations (1) and (2) in its Consolidated Clause 3, Report 7, which was considered by City Council on October 26, 27 and 28, 2004, i.e., that:
    - “(1) City Council adopt the staff recommendations in the Recommendations Section of the report (September 3, 2004) from the Commissioner, Urban Development Services; and
    - (2) in the event a complaint originates from a Councillor’s office or proceeds through a Councillor’s office, the respective Councillor shall be consulted prior to Phase 2 or Phase 4 of the programme.”
  - (b) with respect to Recommendation (2) above, that consideration be given to further consultation with the respective Councillor on actions taken prior and subsequent to Phase 1 and Phase 3 of the programme;
- (2) be requested to recommend to City Council that the Provincial Government amend the relevant legislation that would give the City of Toronto’s Municipal Licensing and Standards Officers the same enforcement rights that other municipal officers may have, such as Health Inspectors and inspectors in Fire Services;
- (3) request the Commissioner, Urban Development Services, to report on:
  - (a) amending the City’s protocol by implementing a new step in the process that would advise the Ward Councillor, through a monthly report, of every case of complaint, investigation and subsequent action taken by the City at every level;
  - (b) giving the Ward Councillor more autonomy regarding enforcement decisions; and

- (c) introducing a fee that would be charged to chronic by-law offenders, in cases where additional inspections are required to be carried out by Municipal Licensing and Standards Officers, in order to ensure compliance.

Background:

The Etobicoke York Community Council on January 18, 2005, considered Clause 3 of Report 7 of The Planning and Transportation Committee, entitled “Comprehensive By-law Compliance Programme”, which City Council on October 26, 27 and 28, 2004:

- (1) deferred consideration of this Clause to its meeting on February 1, 2005;
- (2) requested the Commissioner of Urban Development Services to make a presentation to each of the Community Councils on the Comprehensive By-law Compliance Programme; and
- (3) directed that all comments made at the Community Council meetings be forwarded to Council for consideration on February 1, 2005, through the Planning and Transportation Committee.

A presentation was made by Rudi Czekalla, Senior Policy Research Officer, Municipal Licensing and Standards.

**The Planning and Transportation Committee also submits the communication (January 25, 2005) from North York Community Council:**

Recommendations:

The North York Community Council recommended to the Planning and Transportation Committee that the following recommendations of the Planning and Transportation Committee contained in Clause 3 of Report 7 of the Planning and Transportation Committee, be endorsed:

- “(1) City Council adopt the staff recommendations in the Recommendations Section of the report (September 3, 2004) from the Commissioner of Urban Development Services; and
- (2) in the event a complaint originates from a Councillor’s office or proceeds through a Councillor’s office, the respective Councillor shall be consulted prior to Phase 2 or Phase 4 of the programme.”

Background:

The North York Community Council on January 18, 2005, considered a communication (November 1, 2004) from the City Clerk, advising that City Council on October 26, 27 and 28, 2004:

- (1) deferred consideration of this Clause to its meeting on February 1, 2005:
- (2) requested the Commissioner of Urban Development Services to make a presentation to each of the Community Councils on the Comprehensive By-law Compliance Programme; and
- (3) directed that all comments made at the Community Council meetings be forwarded to Council for consideration on February 1, 2005, through the Planning and Transportation Committee.

A staff presentation was made by Bill Blakes, North District Manager, Municipal Licensing and Standards, Urban Development Services.