



## **STAFF REPORT ACTION REQUIRED**

### **Multiple and Feuding Neighbour Complaints - Feasibility of Waiving Appeal Fees and Implementing a Final and Binding Resolution Process**

<b>Date:</b>	March 4, 2014
<b>To:</b>	Licensing and Standards Committee
<b>From:</b>	Executive Director, Municipal Licensing and Standards
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2014\Cluster B\MLS\LS14005

#### **SUMMARY**

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This report responds to direction from the December 9, 2013 Licensing and Standards Committee to re-consider waiving the appeal fees resulting from the numerous complaints submitted by one individual in Ward 38, Scarborough Centre, and the feasibility of implementing a final and binding resolution process related to multiple complaints from feuding neighbours.

After thoroughly reviewing the details of the incident in Ward 38, and after determining that a large number of the complaints lodged by the individual were valid contraventions of the City's by-laws, Municipal Licensing and Standards (ML&S) staff conclude that waiving the associated appeal fees for these matters would not be appropriate.

Legislatively, there is nothing that prohibits the City of Toronto from implementing a final and binding resolution process. However, there would be legal issues in doing so. On-going neighbour disputes that are not the subject of valid by-law contraventions, are considered private civil matters, currently absent from any regulation by the City of Toronto. Further, to impose a final and binding resolution in such disputes would require arbitration, which would pose substantial costs for the City. The City's primary interest is ensuring compliance with its by-laws, and its role in on-going neighbour disputes should continue to be one that assists residents in coming to a voluntary resolution either through staff's facilitation of dispute resolution or through referral to existing community-based organizations that provide such services.

Legal Services and the Office of the Ombudsman were consulted in the preparation of this report.

## **RECOMMENDATIONS**

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**The Executive Director, Municipal Licensing and Standards recommends that:**

1. The Licensing and Standards Committee receive this report for information.

### **Financial Impact**

There is no financial impact expected from this report beyond what has already been approved in the current year's budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

At its meeting of December 9, 2013, Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards, to (1) report on how the City can waive any appeal fees resulting from the numerous complaints submitted by one individual in Ward 38, Scarborough Centre, and (2) engage in dialogue with the Office of the Ombudsman and report on the feasibility of implementing a final and binding resolution process related to multiple complaints from feuding neighbours.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS25.2>

## **ISSUE BACKGROUND**

In May 2013, one individual in Ward 38, Scarborough Centre, submitted 59 complaints within a two-week period for various property standard by-law infractions against neighbours living in one Scarborough subdivision. The incident prompted a request by City Council to consider a policy on how to deal with multiple complaints from one person, complaints that appear to be vexatious, complaints from feuding neighbours, and to waive the appeal fees for such complaints.

ML&S staff reviewed the details of the incident in Ward 38 and were able to substantiate many of the complaints as valid contraventions of the City's by-laws for which notices of violation were appropriately issued. In addition to the initial 59 complaints submitted in May, another 38 complaints were later filed by the same individual for a total of 97 complaints, resulting in ML&S' issuance of a total of 40 notices of violation for fences, long grass and weeds, and zoning infractions. The other 57 complaints were either unsubstantiated, referred to Transportation Services for issues with the public right-of-way, or were minor in nature and did not pose a safety hazard so staff exercised discretion to not issue an order.

Staff reported to the December 9, 2013 Licensing and Standards Committee meeting against waiving the appeal fees for the affected residents. Acknowledging the challenges posed by multiple, vexatious, and feuding neighbour complaints, ML&S committed to reinforcing its current internal divisional procedures respecting the roles of by-law enforcement staff, the process for which they may escalate difficult complaints up through senior management, as well as educate the public.

Licensing and Standards Committee further directed ML&S to re-consider its position on waiving the appeal fees for the affected residents and to consider the viability of implementing a final and binding resolution process related to multiple complaints from feuding neighbours.

## **COMMENTS**

### **Feasibility of Waiving the Appeal Fees**

#### ***Scarborough Orders***

As the current ML&S enforcement model is largely complaint driven, ML&S investigates all complaints and uniformly issues notices and orders where officers conclude that there is a legitimate by-law contravention. Significant ML&S staff time and resources were required to undertake the inspections and issue notices of violation. ML&S believes the orders were issued correctly and expects all residents to comply with City by-laws. All of the affected residents have the option to exercise their right to appeal. Although, the experience of ML&S is that property owners often choose to remedy their violation without an appeal. Of the 40 notices of violation issued for the properties in Ward 38, Scarborough Centre, 14 have already achieved voluntary compliance. For the 26 orders that remain outstanding – all of which pertain to fence infractions, ML&S has granted extensions giving consideration to the less than favourable weather conditions of recent months and pending Licensing and Standards Committee's decision to waive fees. Where possible, ML&S staff are actively working with property owners to help achieve compliance. To date, no appeals have been filed, so currently, there are no appeal fees to be waived.

#### ***Policy***

Waiving appeal fees would ultimately compromise the integrity of our by-laws and its consistent, fair and reasonable application. Appeal fees reflect the actual costs of the appeal process and are levied not as punitive measure, but for the purpose of facilitating the appeal process. It is based on cost recovery. In the case of property-related exemptions for fences, the application fee to appeal is \$200. The appeal fee captures the costs, in terms of staff time, for ML&S to prepare a staff report on the property to the appropriate Community Council, and for the City Clerk's Office to mail out a Notice of Hearing to neighbouring property owners of the date that the application will be considered by Community Council.

### **Feasibility of Implementing a Final and Binding Resolution Process for On-going Neighbour Disputes**

ML&S staff have experienced situations where it is apparent that the City's by-laws are being used by feuding neighbours as a means to deal with concerns they have with one another and the particular by-law matter is not associated with the root cause of the dispute. In such cases, ML&S enforcement officers often facilitate dispute resolution and

have the ability to refer parties to external, community-based mediation services, where they exist.

The mediation services provided by these external, community-based organizations are typically free of charge, voluntary and confidential. Mediators act as neutral third parties who facilitate dialogue to help parties come to an agreement, but they do not impose one. Further, the mutually agreed upon resolution may not be final and binding, and the City would not be in a position to enforce any private agreement.

For any resolution to be final and binding, arbitration would be required. In arbitration, parties must agree to be bound by any decision made by the arbitrator, and the decision is one that is normally binding and enforceable against the parties. Arbitration often arises as a result of contractual relations where arbitration can be enforced through the contract between two parties. However, in the present context of multiple complaints from feuding neighbours, there is no overarching contract in place, so it is not clear how an arbitration outcome could be imposed on the parties.

In private disputes, the costs of arbitration are borne by the parties involved as they select and consent to the services of an arbitrator. If the City were to impose such a process onto feuding parties, the City would need to absorb those costs. Depending on the frequency of use and the need for quick arbitration, a permanent arbitrator may need to be selected, which would mean considerable costs for the City.

Legislatively, there is nothing that prohibits the City of Toronto from implementing this type of dispute resolution process. However, on-going neighbour disputes that are not the subject of valid by-law contraventions, are considered private civil matters, currently absent from any regulation by the City of Toronto. There is no legislation that addresses the City's involvement in or ability to impose mediation or arbitration onto feuding neighbours. The City would be interfering with private civil matters that are beyond the City's primary interest of ensuring compliance with its by-laws.

There is also the concern that implementing this type of dispute resolution process may result in a conflict of laws. For example, the right to appeal a Property Standards violation to the Property Standards Committee is established in the *Building Code Act, 1992*. As such, regardless of any mediation or arbitration outcome, property owners would retain the right to appeal the notice of violation or to seek an exemption where one is possible. Similarly, an arbitrator's decision on a case may be inconsistent or unrelated to the City's enforcement objectives and principles. In such a case, ML&S would still require compliance with the relevant City by-law regardless of the arbitration outcome. More work would be required to determine exactly how such a dispute resolution process could be implemented and the precise costs involved, and it would require the engagement and participation of a number of City divisions.

ML&S' role in on-going neighbour disputes should continue to be one that facilitates residents in coming to a voluntary resolution. ML&S recognizes the value of existing community-based organizations that provide mediation services such as St. Stephen's

Community House, and continually seeks to identify and reach out to other organizations that may assist in managing neighbour and community conflicts.

Where complaints are the subject of valid contravention of City by-laws, ML&S will issue notices and orders. However, in instances where multiple, persistent, and/or repetitive complaints are being filed that have no merit from a municipal enforcement perspective, ML&S staff have the ability to escalate matters to senior management in the division, in order to determine the appropriate course of action. ML&S may engage the Ombudsman's Office in the determination of advanced resolution strategies and protocols for dealing with such complaints, and the Executive Director, ML&S, has the ability to take no further action on complaints that are deemed to be vexatious in nature.

## **CONTACT**

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## **SIGNATURE**

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