



REPORT FOR ACTION

Tools Available to Municipal Licensing and Standards for Enforcement

Date: September 7, 2016

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

As directed by Licensing and Standards Committee at its meeting of May 19, 2016, this report summarizes the enforcement tools available to Municipal Licensing and Standards (ML&S) that are prescribed in bylaws and authorized by provincial legislation and describes the circumstances when they may be sought. The goal of enforcement action is always compliance; ML&S officers use discretion to determine which tool will best achieve compliance subject to the circumstances.

ML&S is responsible for ensuring that enforcement action is appropriate; impartial and independent; and balanced, fair and consistent.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

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

FINANCIAL IMPACT

There are no financial impacts beyond what has already been approved in the current year's budget.

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

DECISION HISTORY

At its meeting of May 19, 2016, Licensing and Standards Committee deferred item LS11.6 - Tools Available to Municipal Licensing & Standards for Enforcement until its meeting of September 21, 2016, with the request that the Executive Director of ML&S report at that time on the full inventory of enforcement tools available to the Division, including information on:

- The circumstances under which a warrant would be sought by MLS for an investigation;
- The circumstances under which MLS would exercise the authority for an emergency licence suspension; and
- The number of times the aforementioned enforcement tools have been used by MLS over the past 10 years.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS11.6>)

COMMENTS

ML&S inspects and investigates private and public property and businesses to ensure compliance with municipal bylaws. The municipal bylaws were established to protect the health, safety and well-being of persons; to protect persons and property, including consumer protection; and with respect to animals, business licensing and structures including fences and signs. ML&S enforces more than 27 bylaws and other legislation (such as the Dog Owners Liability Act), including:

- Business licensing
- Property standards
- Noise
- Regulations on animals
- Littering and dumping
- Parks
- Signs
- Zoning

A list of bylaws enforced by ML&S is contained in Attachment 1.

ML&S enforces bylaws by encouraging residents and business owners to comply voluntarily and taking action when compliance does not occur. Education is done through the creation and sharing of resources, City website, media campaigns and attendance at events to promote bylaw compliance.

Residents, properties or businesses that are not in compliance with bylaws typically come to the City's attention through complaints or through investigations by a ML&S officer. Officers investigate the issue to confirm a bylaw has been violated and then can take the actions described below:

- Educate the resident of the violation and warn the resident of the consequences of non-compliance
- Issue a notice of violation
- Issue a provincial offences ticket
- Issue an order to comply or discontinue
- Take remedial action
- Pursue additional court-based remedies
- Pursue additional remedies related to licensed businesses
- Pursue additional remedies related to animals

The goal with any actions taken by ML&S is always to achieve compliance, and officers use their discretion to determine which tools will work best to achieve compliance.

When making decisions about enforcement actions, officers must consider the relevant legislation and what authority staff have to take that action. Each bylaw that ML&S enforces is associated with enabling legislation that sets out the regulatory framework for enforcement. For example, the ability to issue orders to comply and to undertake remedial action is available for property standards violations, but not necessarily every other bylaw because the property standards by-law was passed under the specific authority of the provincial *Building Code Act*. Other bylaws enforced by ML&S are passed under the authority of the provincial *City of Toronto Act* and, in the case of zoning bylaws, the *Planning Act*.

Once officers determine the permitted tools, they use their discretion to determine the tool that will achieve compliance most effectively. Officers consider the seriousness of the violation, the impact of the violation on public safety, the likelihood of the person to repeat the violation, and the impact of the enforcement activity on business and community in Toronto. The decision to take enforcement action must be free from bias and political interference. The tool used should be proportional to the harm caused by the violation.

The equity of an enforcement action is also considered. This means officers consider a person's circumstances and their ability to comply with the enforcement action taken. For example, in responding to a complaint about a resident with mental health issues with an unsightly property, officers will work with other divisions, including Public Health, Employment and Social Services, and Shelter, Support and Housing Administration, to ensure the resident gets access to mental health supports. Though there may be a bylaw violation, an enforcement action from ML&S may not be the appropriate response.

Tools for enforcement

Education and warnings

Depending on the circumstances, officers may work with residents to seek voluntary compliance by making them aware of the violation and explain what they can do to comply with the bylaw. Officers may share written materials or direct residents to the City's website for further information. Officers can also issue an **advisory**, which informs

someone that they may be in violation of a bylaw and explains the bylaw requirements. For example, if ML&S receives a complaint about a lawn with long grass and weeds, an officer may issue an advisory to the property owner explaining that there is a bylaw that requires them to maintain their lawn and that if they do not, enforcement action may be taken.

Notices of violation

An officer can issue a **notice of violation**, which describes how a bylaw has been violated and sets a timeframe within which the person must comply with a bylaw in order to avoid further enforcement action. The person is usually given six to ten days to comply.

For example, if a resident has debris and junk on their lawn, an officer can issue a notice of violation detailing the issue and providing the resident with six days to remove the debris and junk. If no compliance occurs, ML&S would take additional enforcement action.

Provincial Offences Tickets

Officers can issue a set fine **ticket** under Part I of the Provincial Offences Act that sets out a specific amount that may be paid out of court for certain bylaw violations. The fine depends on the offence and has been set by the Regional Senior Justice upon request of the City; set fines usually range from \$100 to 1,000 for City offences. The recipient can pay the ticket or dispute it through the provincial court, at which point the court will determine the amount of the fine, if any. Some examples include:

- Owner of place of refreshments with no licence - \$200
- Keeper of a place where animals or birds are sold as pets with no licence - \$300
- Body rub parlour with no licence - \$500
- Commercial parking lot owner with no licence - \$500
- Temporary sign provider with no licence - \$500

Depending on the nature of the offence and the circumstances, officers can issue a **court summons** under Part III of the Provincial Offences Act, which includes a date the recipient must appear in court before a justice of the peace. If convicted by the justice of peace, the individual will be required to pay a fine. Fines can be levied for up to \$100,000 depending on the enabling legislation of the specific bylaw that has been violated, though justices of the peace rarely impose the maximum fine.

Consider a property where there have been multiple complaints about a roof that is not properly maintained. A ML&S officer would investigate the site and issue an order to comply, requiring the property owner to fix the problems identified with the roof. If compliance is not achieved, the officer could charge the property owner through the issuance of a court summons. If the property owner is found guilty during a trial with a justice of the peace, a fine would be imposed by the court.

Orders to comply and orders to discontinue

For property standards violations, ML&S can **order** a person to take action to **comply** with the bylaw under the authority of the Building Code Act (s. 12(2)). The property standards by-law aims to ensure residents live in a home that is clean, safe and secure and has adequate heat, lighting and plumbing. For violations of some bylaws other than property standards, ML&S can **order** a person to **discontinue** an activity that violates a bylaw or take similar remedial action steps under the authority of the *City of Toronto Act* (s. 384). If someone does not comply with an order, ML&S can issue a court summons under part III of the Provincial Offences Act.

Remedial action

If a person does not comply with an order under a property standards bylaw, ML&S can take **remedial action** once the order is confirmed and there has been wilful non-compliance; that is, they can take the action required and recover the costs of the action by adding it to the person's property taxes.

For example, ML&S can order an apartment building owner to clean the interior of a building as required in the property standards by-law. If the owner is wilfully non-compliant and neglects to comply with the order, ML&S can retain a contractor to complete the work and recover the costs of the action through the owner's property taxes. The authority for this action is given under the *Building Code Act* (s. 17.1).

Additional court-based remedies

ML&S/the City may seek an **order from a court to restrain or prohibit** a person or business from continued violations of a bylaw under the authority of the *City of Toronto Act* (s. 380). These are sometimes called injunctions, prohibition orders or an order to restrain. Orders to restrain or prohibit are extraordinary remedies and are granted at the discretion of the court. The City must present a case showing that no other remedy has been or would be adequate and must be prepared to go through a litigation process as set out in the Courts of Justice Act.

Additional remedies for licensed businesses

There are a number of unique enforcement tools related to business licensing. The most important tool that is frequently used by ML&S is a hearing at the **Toronto Licensing Tribunal** (*City of Toronto Act* s. 416). The Tribunal is an independent quasi-judicial body consisting of seven citizens appointed by Toronto City Council for a four-year term. Hearings are held weekly and are open to the public. The Tribunal is governed by the Statutory Powers Procedures Act and has the authority to:

- Approve or refuse an application for a licence
- Approve or refuse the renewal of a licence
- Place conditions on a licence
- Suspend or revoke a licence

ML&S may **refuse to issue or renew** a business licence because the licensee has exceeded the business licensing thresholds as a result of Criminal Code, Highway Traffic Act or bylaw convictions. However, all applicants may request a hearing to appeal the decision, and the Tribunal will make the final decision.

ML&S may also refer a licence to the Toronto Licensing Tribunal for a hearing if the licensing bylaw or any other law has been violated. In making a decision, the Tribunal has to balance the protection of the public interest with the licensee's need to make a living.

ML&S does have the authority, through the *City of Toronto Act* (s. 86(2)) to **suspend a licence for 14 days without a Tribunal hearing** if the continuation of a business **poses an immediate danger to the health or safety of people or property**. Before suspending the licence, ML&S must provide the licensee with the reasons for the suspension and an opportunity to respond. This authority may be used if a business poses an immediate danger and the Tribunal is not able to convene a hearing quickly enough. Due to the nature of grounds needed to support the suspension, this mechanism has only been used once in the last ten years.

ML&S has the authority to bring a business to a court to obtain a **closure order** under the authority of the *City of Toronto Act* (s. 387(1)). A judge may order that a premises be closed for up to two years if the owner is convicted of operating without the required licence. A closure order can also be obtained against a landlord if there is evidence the landlord knew the tenant has been convicted of operating without a required licence or knew the tenant was engaging in activities without a required licence. Closure orders are sought only when there are serious consequences to a business continuing to operate.

Search warrants

ML&S officers can seek a **warrant** to enter a dwelling from a provincial judge or justice of the peace under the authority of the Provincial Offences Act (s. 158) or the Dog Owner's Liability Act (s.13). Entry into places of business do not require warrants. ML&S can enter onto a property or into a business at any reasonable time to carry out an inspection to determine whether the owner is complying with any bylaw, the actions required by an order have been taken or the conditions of a licence have been met. Warrants are not often sought because much ML&S enforcement work does not require entry into a dwelling and because of the nature of the grounds needed to support a warrant. It is not possible to accurately determine the number of warrants sought by ML&S in the last ten years because this data is not captured.

Additional remedies related to animals

ML&S officers have the authority to take additional actions regarding animals under the authority of the *City of Toronto Act* and other relevant legislation, including:

- Seize and impound of prohibited, dangerous or unrestrained animals;
- Euthanize an impounded animal to alleviate suffering or ensure human safety;

- Issue a notice to muzzle a dog that has bitten a person or animal; and
- Spay and neuter feral cats.

CONTACT

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SIGNATURE

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Municipal Licensing and Standards

Attachment 1: Bylaws Enforced by Municipal Licensing and Standards

ATTACHMENT 1: BYLAWS ENFORCED BY MUNICIPAL LICENSING AND STANDARDS

Bylaw	Description	Enabling legislation
Chapter 349	Animals	City of Toronto Act/Animals for Research Act
Chapter 363, Article V	Building Construction and Demolition, Right of Entry Permits	City of Toronto Act
Chapter 395	Clothing Drop Boxes	City of Toronto Act
Chapter 447	Fences	City of Toronto Act
Chapter 466	Fireworks	City of Toronto Act
Chapter 480	Garage Sales	City of Toronto Act
Chapter 485	Graffiti	City of Toronto Act
Chapter 489	Grass and Weeds	City of Toronto Act
Chapter 497	Heating	City of Toronto Act
Chapter 510	Holiday Shopping	City of Toronto Act
Chapter 545	Licensing	City of Toronto Act
Chapter 546	Licensing of Vehicles-For-Hire	City of Toronto Act
Chapter 548	Littering and Dumping of Refuse	City of Toronto Act
Chapter 591	Noise	City of Toronto Act
Chapter 598	Numbering of Properties	City of Toronto Act
Chapter 604	Packaging	City of Toronto Act
Chapter 608	Parks	City of Toronto Act
Chapter 629	Property Standards	Building Code Act
Chapter 632	Property, Vacant or Hazardous	City of Toronto Act

Bylaw	Description	Enabling legislation
Chapter 659	Refrigerators and Other Appliances, Abandoned	City of Toronto Act
Chapter 693	Signs	City of Toronto Act
Chapter 740	Street Vending	City of Toronto Act
Chapter 832	Videotape Stores, Licensing	City of Toronto Act
Chapter 835	Vital Services, Discontinuance of	City of Toronto Act/Residential Tenancies Act
Chapter 841	Waste Collection, Commercial Properties	City of Toronto Act
Chapter 844	Waste Collection, Residential Properties	City of Toronto Act
By-law 569-2013	City-wide zoning bylaw	Planning Act
Multiple	All former zoning bylaws	Planning Act