



Alternative Dispute Resolution Review

Date: March 28, 2018

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

The vision of Municipal Licensing and Standards (MLS) is to contribute to the safety, vibrancy, and maintenance of our communities by being a leader in the professional delivery of bylaw enforcement, administration and animal care services to the City of Toronto. As part of this, MLS' Municipal Standards Officers work to ensure implementation of, and compliance with, bylaws and standards. In delivering this service, staff work with community members, aiming to deliver excellent customer service, provide options, achieve compliance, and help customers resolve disputes and prevent future complaints.

Though personal disagreements exist in all community settings, disputes between neighbours can become broader, affecting the community. When neighbours begin making frequent bylaw complaints against each other, more staff time and resources are needed. On a historical and ongoing basis, there are instances where a high volume of minor bylaw investigation requests may arise in clusters of neighbouring properties. In the summer of 2016, City Council asked staff to research alternative dispute resolution and its potential role in resolving some of these enduring or disruptive neighbour disputes that involve investigation and enforcement services.

Staff conducted a jurisdictional scan, which revealed that at least a dozen municipalities across Canada and the United States use mediation, a type of alternative dispute resolution, to help resolve conflicts between neighbours and divert unnecessary cases from city resources, such as bylaw enforcement. In addition to the jurisdictional scan, staff conducted interviews with several stakeholders working in and with mediation programs across Toronto.

Statistics and findings on success of mediation programs point to success in diverting cases from bylaw enforcement and getting to the root cause of long-standing community or neighbour-to-neighbour issues.

MLS supports the City's transformation objectives and is working internally and with partners to identify and make improvements to its service delivery over the next several

years. Identifying new and effective approaches to serving customers and achieving bylaw compliance, through initiatives such as mediation, helps support the division's efforts to be more efficient and obtain effective resolutions.

The Executive Director, Municipal Licensing and Standards recommends that City Council direct the establishment of a one-year pilot mediation referral program to provide this additional tool for managing some bylaw complaints, as appropriate, which appear to be arising from disputes between neighbours. City staff believe there are opportunities for this type of a process in some instances, and will be starting with a focus on referrals where appropriate, for issues related to noise, fences, and right-of-entry. The pilot program will consist of internal training, developing criteria and referral processes, and communication to staff on referring appropriate cases to free community mediation services delivered by St. Stephen's Community House and Warden Woods Community Centre, trusted City of Toronto funded agencies. The program will include robust evaluation and monitoring to track success and evaluate outcomes.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council direct the Executive Director, Municipal Licensing and Standards to establish a one-year pilot mediation referral program, beginning June 1, 2018, to support certain types of bylaw complaints stemming from disputes or conflict between neighbours.
2. City Council direct the Executive Director, Municipal Licensing and Standards to report to the Licensing and Standards Committee on the outcomes of the pilot, upon its completion, in Q3 2019.

FINANCIAL IMPACT

There are no financial impacts for the operation of the program itself as the community mediation services provided are free due to a community grant provided to St. Stephen's Community House from the City's Social Development, Finance & Administration division

Program start-up costs will include \$10k for program design and training costs for St. Stephen's Community House, which are accommodated in the existing MLS training budget.

The Deputy City Manager, Cluster B and the Acting Chief Financial Officer have reviewed this report and agree with the financial impact information.

DECISION HISTORY

At its meeting of October 25, 2016, the Licensing and Standards Committee adopted [LS14.3 Feasibility of a Alternate Dispute Resolution Process](#) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.LS14.3>), and directed the Executive Director, Municipal Licensing and Standards to conduct research on the potential for using alternative dispute resolution processes to solve neighbour disputes. The Executive Director was asked to report to the Licensing and Standards Committee on the outcome of this research.

COMMENTS

Bylaw Compliance and Neighbour Disputes

The type and impact of a bylaw contraventions varies significantly and includes bylaw violations that may be 'minor' in nature or do not have any direct impact on adjacent properties. These types of complaints may create neighbourhood conflict as multiple parties become involved in reporting bylaw contraventions on each other. Complaints about minor bylaw violations can stem from underlying issues such as past grievances, misunderstandings or communication breakdowns that have arisen between neighbours.

MLS is seeking to more efficiently prioritize issues that have health and safety concerns or more direct negative impacts on the adjacent properties or neighbourhood. However, the City has currently expended significant amounts of its limited resources in dealing with minor neighbourhood disputes, as the investigation of bylaw violations involves not only Municipal Standards Officers but can also involve various other City staff e.g. Courts and Prosecutions, Community Council, or City Councillors.

At present the main method of dealing with these situations is through traditional enforcement. It would be beneficial to have an effective process that can provide a non-adversarial path to address those problems that occur between neighbours that may not benefit from, or be resolved through, traditional enforcement, including methods to respond effectively and achieve better compliance in recurrent cases. Mediation has been proven to be effective elsewhere in dealing with disputes that have a limited scope and where relationships have broken down among neighbours and in which third party intervention is appropriate.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a group of techniques that are used to resolve issues between parties such as neighbours without legal action. The ADR movement gained popularity in the United States beginning in the 1970s as lawyers, social workers, and community members sought less adversarial and more cost-effective ways to reach agreements. ADR includes strategies such as arbitration, negotiation, and mediation, and can exist in a wide range of contexts from more formal and institutional to more informal and community-based.

Mediation

Mediation is a form of ADR in which two individuals or groups resolve a dispute with the help of a neutral third party who serves as a mediator. Mediation has been used in a wide range of settings to resolve issues such as disputes over labour contracts, child custody arrangements, or noise complaints between neighbours. Mediation is most appropriate in circumstances where there is an issue between two parties who have an interest in maintaining their relationship. In such cases, as with neighbour disputes, there is value in the relationship and a desire to salvage and repair it.

Mediation should be confidential and independent of any related legal processes: in this way, parties can feel free to share any information that might help them reach an agreement, but not fear that this information would be used against them in a subsequent tribunal or trial process.

Jurisdictional Scan

In researching the use of ADR in the context of municipal governance and bylaw enforcement in particular, staff found that over a dozen jurisdictions in Canada and the United States use some form of mediation to resolve disputes between neighbours; these municipalities include Mississauga, Brampton, Waterloo, Calgary, Winnipeg, and Minneapolis. Within the City of Toronto, Court Services and the Committee of Adjustment have recently adopted mediation into their processes. The following sections outline examples of mediation programs, highlighting the different models currently being used.

The jurisdictional scan and interviews revealed that municipalities use different models of mediation programs. In some cases, a mediator is hired on a limited basis as needed by the municipality to provide mediation, while in other programs people are instead referred to a community agency that offers mediation. In all examples the costs were covered in one of three ways: by a community agency, by a municipality directly, or by a municipality indirectly through funding to a community agency. Fees to clients did not appear to be charged in any of the programs reviewed.

Common features of the mediation programs were that municipal workers were not directly involved in the mediation process. Instead, mediators were all neutral third parties, a practice recommended to instill trust in the process among participants. All mediation processes were treated as confidential; as a result, any information revealed during mediation did not influence any subsequent decisions around enforcement.

Interview participants noted that though people may come to mediation to resolve conflicts relating to bylaw enforcement, the issues that ultimately underlay the dispute are most often not about the bylaw at all. Instead, those in mediation often have beliefs, prior grievances, or misunderstandings that are causing the conflict; in some cases, the issue they have raised with bylaw enforcement is not actually covered by existing bylaws, while in other examples, the neighbours had never actually discussed their conflict with one another before contacting bylaw enforcement services.

Programs reviewed in other jurisdictions found that mediation was appropriate in handling ongoing disputes between neighbours, in particular those that affect two parties, such as complaints over noise or fences. Interview participants noted that introducing mediation before an investigation had started and before any bylaw violations had been identified or acted upon was the most helpful.

Practitioners described experiences where mediation was particularly effective at handling repeat and persistent complaints that were having a significant impact on a community (e.g. neighbours making calls to the City and Police about issues with a neighbouring property). These complaints also have significant draws on City resources.

Managers of mediation programs emphasized that though mediation could not solve all disputes, it was helpful in many cases as it provided communication strategies to neighbours, preventing future disputes, and allowed clients to feel heard.

None of the programs reviewed in other jurisdictions made mediation mandatory for participants, and when asked the opinion was that they are much more effective when they are voluntary.

To date, some MLS staff in the Toronto and East York district have used the services of St. Stephen's Community House to refer people for mediation. This has been somewhat successful, but participation has been informal to date and has had limited supports or measurement. Officers have indicated their substantial support for referrals to community mediation, and believe it would make a difference in how they are able to achieve compliance and customer service in their work.

Statistics and findings on the success of mediation programs are not widely available, but those that do exist point to success in diverting cases from bylaw enforcement. In Mississauga, for example, where mediation is widely used for neighbour disputes, approximately 70-100 cases per year (out of a total of 350-500 per year) have been resolved through mediation since 2013. In other words, between 16% and 21% of cases that initially were referred to the program were resolved through mediation. Practitioners indicated that among those clients that completed the mediation process, success rates are high; between 75 and 80% reached an agreement that resolved their problem.

In 2018, implementation will begin for the Toronto Police Transformational Task Force Interim report recommendations, as it relates to some bylaw enforcement issues that do not pose a risk to public safety being referred to MLS. One call category called "disputes" will be referred. Mediation might be an effective part of a plan to address these calls for service, as it offers a potential to divert some of the additional volume from bylaw enforcement.

MLS is looking at system and process changes that will transform the business to be more proactive and customer service-oriented. Incorporating mediation into appropriate types of cases supports these objectives and will help the division advance its practices. Mediation also offers an alternate response to minor bylaw contraventions that makes

better use of City enforcement resources and offers alternate routes for these issues to be resolved.

Recommendations and Next Steps

It is recommended that Municipal Licensing and Standards implement a one-year pilot mediation referral program to support the City's available tools for dealing with bylaw complaints caused by disputes between neighbours. Following the pilot, the results would be evaluated to determine how to proceed in the future.

Data collected during the pilot could include the number of cases referred for mediation per district, the number of clients who agree to mediation following referral, the number of referred cases that reach an agreement, as well as the number of cases referred to mediation as an alternative when there was no bylaw issue. Additionally, a post-agreement follow-up (e.g. three months after) would help illustrate the sustainability of the agreements reached. Data on the number of files MLS is able to close without further action, and the number of complaints withdrawn after mediation, would be tracked. Additional feedback could include pre- and post-implementation evaluations from staff, and voluntary feedback from customers referred to mediation.

Circumstances under which mediation would be considered include disputes and conflict between neighbours over issues related to noise, fences, and right of entry that are assessed by the Officers as being appropriate for mediation. As mentioned, mediation works well when people have a long-term interest in getting along and may see some value in fixing their relationship. Issues that are appropriate are those that are rooted in conflict, e.g. a "falling out" triggers a series of complaints, or many complaints are suddenly made about the same address from one individual.

Fences, noise, and right of entry issues are managed through the Investigation Services (IS) section of MLS, and so the pilot would be limited to this section. IS staff would be able to refer complainants (neighbours) to mediation according to specified criteria. Staff could also refer customers/complainants who have disputes that Municipal Standards Officers have determined are not regulated by any City bylaws. Participation in the mediation process for both parties is entirely voluntary, and beyond making the referral to the service, MLS staff would have no further involvement in the mediation process, other than to receive information about when the mediation has ended and the nature of that resolution.

Introducing mediation before an investigation has started and before any bylaw violations have been identified or acted upon would make best use of resources and likely yield better results. As such mediation may be considered before an investigation is begun, but may also happen in parallel, depending on the situation. Just because parties are attending mediation does not necessarily prevent MLS from continuing an investigation. Resolution outcomes may include a withdrawal of the complaint, voluntary compliance, another mutually agreeable resolution, or no agreement. If there is no resolution via mediation, enforcement will proceed as per the usual process.

As noted in other jurisdictions, mediation would be limited to one attempt at mediation per complaint to ensure that the service is available to the maximum number of participants.

MLS has chosen St. Stephen's Community House and Warden Woods Community Centre for this pilot program for the delivery of community mediation services. St. Stephen's Community House is a City of Toronto-funded community mediation service that serves all of Toronto's communities. Warden Woods Community Centre is a partner organization of St. Stephen's Community House that serves Scarborough. Mediation services are offered for free and these organization are experts in the type of mediation that would be appropriate for bylaw-related cases. MLS has chosen these organizations because of this expertise in community mediation, their ability to scale up quickly, and an understanding of MLS' needs based on past experience (MLS has referred limited numbers of cases to St. Stephen's Community House in the past.)

Staff have advised that their operations are likely scalable to accommodate additional volume expected with MLS referrals. Implementation would be fairly seamless and could begin quickly. Costs to MLS would be limited to \$10k in initial start-up fees including program design and training.

Implementation would happen in partnership, and include a communication plan (internal/external), updating of relevant forms and documents, staff training, community outreach, developing procedures and guidelines, and setting up regular reporting/monitoring systems.

Strengthening the referral relationship between the two organizations will be beneficial to MLS customers, make better use of City resources, provide alternate enforcement options, and improve community relations.

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SIGNATURE

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