



City of
Peterborough

TO: Members of the Budget Committee

FROM: Malcolm Hunt, Director of Planning & Development Services

MEETING DATE: November 26, 2012

**SUBJECT: Report PLBD12-001
A New By-law Enforcement Model for the City**

PURPOSE

A report to recommend a new by-law enforcement model and to provide additional justification for the By-law Enforcement Services Coordinator Position that appears in the 2013 draft budget.

RECOMMENDATION

That Council approve the recommendation outlined in Report PLBD12-001 dated November 26, 2012, of the Director of Planning and Development Services as follows:

That Report PLBD12-001 outlining a new By-law Enforcement model for the City and which provides additional justification for the By-law Enforcement Services Coordinator Position reflected in the Draft 2013 Operating Budget be received.

BUDGET AND FINANCIAL IMPLICATIONS

The cost of Phase 1 of the project (1 additional FTE) has been included in the draft 2013 Operating Budget. The 2013 financial impact is approximately \$79,200 on an annualized basis partially offset by revenues from set fines in the future.

BACKGROUND

A Historical Perspective:

The by-law enforcement model currently used by the City has existed for at least the past 30 years with relatively minor refinements made to the model approximately 8 years ago. The current by-law enforcement model is a “**reactive**” approach that is complaint-based whereby enforcement activities are actively undertaken by the City only when the issue becomes a problem for a neighbor, a competitor, a tenant, and/or has been reported to a Council member by concerned residents. The issue is typically expressed in the form of a written complaint. The reactive model has fit the staffing complement of the Building Division and the financial priorities of the City in the past.

The proliferation of nuisance signage or visual blight and several incidents in the province involving children and un-protected pools brought signage and pool safety to the attention of the community and Council, and the decision to expand enforcement activities in both areas was made by Council. The positions of Sign Enforcement Officer and summer Pool Inspector were added approximately 8 years ago to actively enforce the associated by-laws as there was no available staff capacity to do so.

The reactive approach is becoming less effective and there are more complex enforcement issues to consider. Recently several by-laws have been passed or modified (boarding houses, business licensing) creating new enforcement needs, and issues continue to emerge in the community (property standards, temporary traders, zoning and land use) that will require a more “**proactive**” response to meet what appears to be the rising expectations of the public and council for compliance. This report outlines a service enhancement proposal for By-law Enforcement that would address these issues.

Objectives of a New By-law Enforcement Model:

A new by-law enforcement strategy would have 3 objectives:

1. Provide for a more proactive enforcement approach in selected service areas. Specifically the Sign By-law (By-law 02-045), Sidewalk Sign By-law (By-law 99-115), Pool Enclosure By-law (By-law 87-178), Zoning By-law (By-law 97-123), Business Licensing By-law (By-law as amended 05-197), Property Standards By-law (By-law 84-19) and the Property Maintenance By-law (By-law 96-41).
2. Streamline the administrative and reporting functions in by-law enforcement to provide more timely and consistent issue resolution, quicker prosecutions and improved communication with Council, staff and the public.

3. Address emerging issues such as residential property use, transient and temporary trading, nuisance signage and property maintenance in a manner more consistent with a growing urban centre.

Relevance/Importance of the Objectives:

The “reactive” approach has worked reasonably well for Property Standards and Property Maintenance complaints given the need to enter upon private residential property. It has not been an effective approach however when enforcing by-laws with regard to signage, zoning and business licensing. Waiting for a complaint in these three specific areas may often result in an issue escalating to a community and/or Council concern before staff have even reviewed the matter. A proactive approach with the appropriate staffing would allow staff to become aware of issues earlier. These compliance challenges could be targeted with regular field review to provide a better opportunity to engage and resolve issues before they escalate.

To begin implementing a more proactive enforcement approach requires a supervisory function devoted to by-law enforcement in order to identify the issues, determine the challenges in the field, measure those issues and challenges in terms of how they are anticipated by the current by-laws and policies of the City, develop the tools required to be included in by-laws and policy in consultation with senior staff and then position the field resources to implement the tools developed.

Streamlining of administrative processes, particularly of a supervisory nature, would mean a more timely response in all areas of enforcement. This is of particular importance as complex issues in by-law enforcement that require supervisory input/review are often overtaken by the statutory timelines associated with the Building Code Administration responsibilities of the Building Division. The demand on existing staff to fulfill building code processes results in a loss of priority for by-law enforcement matters.

The Work Plan – Phase 1

Staff recommend that the implementation of a proactive bylaw enforcement model occur in two phases, over the budget years of 2013 and 2014.

Phase 1 consists of the creation of a By-law Enforcement Services Coordinator supervisory position as has been included in the 2013 draft budget. This position will build the framework of the proactive enforcement model and begin the implementation using existing staff resources. This position would be a working, field focused supervisor capable of assisting with workload coverage. The Coordinator will immediately assume enforcement coordination and oversight duties as a primary focus. These duties have currently been undertaken on an “as required” basis by the Deputy and Chief Building Officials. The Coordinator would also work directly with the Municipal Prosecutor for effective evidence gathering and case management should compliance challenges necessitate formal charges being brought in the Provincial Offences court (“POA court”).

The areas of by-law enforcement that lend themselves to a more proactive approach are signage, business licensing and zoning enforcement. These areas of enforcement activity often involve the use of public property, the production of clear evidence from advertising and off-property observation, and the need for permits/licenses/permissions. Property Standards and Property Maintenance can be more challenging to enforce proactively because both areas of enforcement require entry into either private dwelling units or private property. Enforcement requires the demonstration of “reasonable and probable cause” to anticipate a violation of a by-law is taking place. This can be time consuming work, and can often be frustrating in a legal system which often places the burden of proof on the City and often shows great tolerance to the offender.

The implementation of the new administration and reporting framework will be used as the measurement tool to indicate the appropriate advancement to Phase 2 of the enhanced enforcement plan in 2014.

The Work Plan – Phase 2

To implement Phase 2, staff recommend one additional field enforcement position be hired to improve coverage of regulated areas of enforcement. On the measured success of Phase 1, this position would be requested as part of the 2014 budget year.

The existing Property Standards Officer position currently oversees all Property Standards enforcement, convenes and supports Order appeal hearings, supervises and participates in Property Maintenance enforcement (oversight of the Pool Inspector/Property Maintenance Support position) and leads the enforcement activities with regard to Zoning By-law enforcement. The workload in Property Standards matters related to tenant protection has grown to such an extent in recent years that these activities consume the full attention of one enforcement position.

The existing Sign By-law Enforcement Officer has in the past provided limited enforcement support to the Business Licensing function. (i.e. temporary traders such as flower vendors). This enforcement need has increased in the last few years, primarily from requests of the business community or concerns expressed by council members.

Streamlining Enforcement through Set Fines:

Under the Provincial Offences Act, as a complimentary enforcement process, the municipality can adopt a program of set fines and issue “tickets” for offences. This process requires approval of the Ministry of the Attorney General and would entail detailed planning with Legal Services to develop the rationale for the set fine program suitable for approval by the Ministry of the Attorney General. It is envisioned that the set fine approach would be applied to all areas of by-law enforcement.

In essence, the basic infractions that are dealt with on a day to day basis by enforcement staff could be subject to “tickets” being issued and fines assessed. Under the proposed “proactive” enforcement model it is likely that fine revenues would increase in subsequent years. One of the first projects planned for the Coordinator position would be the completion of the work necessary to establish set fines and the ability to issue tickets for offences.

SUMMARY

The By-law Enforcement Services Coordinator position in the draft 2013 Budget will provide for a more proactive enforcement approach in selected and priority service areas, streamline the administrative and reporting functions in by-law enforcement and address emerging issues in a manner consistent with the current and anticipated expectations of a growing urban centre.

The addition of a field enforcement position in 2014, (as identified in Phase 2 of this proposal), will be accomplished on the measured success of Phase 1 of the proposal.

Submitted by,

Malcolm Hunt, MCIP, RPP
Director, Planning and Development Services

Dean Findlay, CBO
Manager, Building Division

Contact Name: Dean Findlay
Phone: 705-742-7777 Ext. 1791
Toll Free: 1-855-738-3755
Fax: 705-742-1294
E-Mail: dfindlay@peterborough.ca