

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Parking and By-law Services Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: October 18, 2011	
SUBJECT/REPORT NO: Mediation Services for Municipal Law Enforcement (PED11181) (City Wide)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Joe Xamin 905-546-2424 Ext. 6656 Marty Hazell 905-546-2424 Ext. 4588
SIGNATURE:	

RECOMMENDATION

- a) That staff be directed to conduct an informal Request for Information from prospective external mediation services to determine the financial viability of establishing a mediation service for dispute resolution related to neighbourhood conflicts in Municipal Law Enforcement; and,
- b) That staff be directed to report back to the Planning Committee with a comparative cost-analysis of using an internal versus external mediator for dispute resolution related to neighbourhood conflicts in Municipal Law Enforcement.

EXECUTIVE SUMMARY

In October 2008, in Report PED08263 "Community Based By-Law Enforcement Strategy" staff was directed to investigate and report back:

- (i) with recommendations designed to decrease the amount of Municipal Law Enforcement Officer time spent on non-value work including but limited to neighbour disputes, bogus complaints, repeat complaints which are not validated and landlord/tenant disputes; and,

- (ii) on the feasibility of establishing a mediation service for dispute resolution using existing staff or an outside agency.

Staff has been implementing on-going enforcement and process efficiencies to maximize Officer productivity, and this Report addresses the feasibility of establishing a mediation service for dispute resolution.

There is a wide array of issues that can lead to potential disputes between or among neighbours such as fences, retaining walls, property maintenance, noise, trees, pets, road games and construction projects. However, such issues are often reported as complaints or repeated complaints, and result in unnecessarily using Municipal Law Enforcement Officers (MLEO), enforcement actions and the Courts in attempting to resolve neighbour disputes.

Mediation is a less costly alternative, offering residents with the potential of a more satisfactory resolution and in a safe environment. A trained mediator facilitates a constructive process allowing disputants an equal opportunity to discuss their concerns. Staff is recommending that a comparative cost-analysis be undertaken in order to review whether an internal mediator should be hired or an external mediator should be retained in order to provide mediation services with an objective of minimizing the amount of time MLEOs spend on such matters and achieving better, longer-lasting resolutions, hopefully, at no cost to the disputants.

Alternatives for Consideration – See Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial/Staffing: There are no financial implications associated with this Report. There will be cost implications if Council decides to create an internal or external mediation service for dispute resolution related to neighbourhood conflicts in Municipal Law Enforcement.

Legal: Mediation, which is generally less costly than enforcement, is intended to lead to agreements between parties to resolve an issue, but at the very least, it allows the disputants to address their concerns in a safe and controlled environment.

A mediation service, if approved, would need to be at arms' length from enforcement to ensure a fair and unbiased approach to resolving the conflict.

HISTORICAL BACKGROUND (Chronology of events)

The Municipal Law Enforcement Section was formed in 2007 following an Operational Review of the former Standards and Licencing Division. In 2008, based upon an

additional review undertaken by BMA Management Consultants, Inc., found that a number of complaints being managed by MLEOs were bogus and repeat complaints as well as neighbour disputes. As a result, BMA made a number of recommendations which Council approved including directing staff to investigate the feasibility of establishing a mediation service for neighbour dispute resolution in order to maximize the Officer's time on enforcement activities.

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

Legal Services and Finance and twenty-five municipalities across Canada, as identified in Appendix "A" to this Report, responded to a survey to determine the municipal trend towards mediation.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Currently, it is estimated that MLEOs handle 180 to 200 cases per year which involve mediating neighbour disputes rather than By-law Enforcement issues per se. Some are simple cases while others are more complex. The more complex the greater the involvement of the MLEO's time and, sometimes, it may require the involvement of the Superintendent and/or Manager and others. One such neighbour dispute over a retaining wall impacted and consumed an inordinate amount of time of the Officer, two of the Superintendents, the Senior Solicitor, the Police and the Ward Councillor. Had this issue been identified and, if mediation had been offered as a solution, it may have reduced time consumed by City staff, which could have been better utilized on managing other by-law violations and enforcement activity.

A comprehensive review of 25 Canadian municipalities was undertaken in order to identify how they manage potential disputes between neighbours, landlords and tenants and other types of bogus/repeat complaints. The following is a summary of the key findings:

- a majority of the municipalities do not provide mediation nor do they provide resources to external agencies to assist with mediation;
- eight municipalities do refer disputants to local meditation services;
- three of the eight municipalities also provide funding or allocate budget to non-profit mediation organizations; and,
- one municipality provides mediation training to all their Officers.

None of the municipalities using mediation have an internal mediator; however, one municipality did provide management support and legal consultation to disputants.

Overall, the mediation support being provided to residents would be at no charge to the participants. Four possible models for creating a mediation service were considered, as follows:

1. Hire an Internal Mediator: MLE Officers would refer cases when they have evidence to suspect that a by-law violation is not the root/sole cause of a dispute. An internal mediator could provide support to the affected parties and offer mediation as a solution. There would need to be a clear distinct separation between enforcement and mediation, as mediation needs to be objective and unbiased.

Also, an Internal Mediator could be used to support other areas such as in the Growth Management Division (retaining wall and drainage disputes) and Committee of Adjustment issues and, if workload permits, assist Members of Council in their dealings with neighbour disputes.

2. Mediation Training for all Officers: This option, as used in Calgary, provides training for all Officers so that they may effectively assess and identify potential neighbour disputes as well as assist in mediating conflicts. This is an effective strategy and provides all Officers with the same level of training and education; however, consistency in mediating will differ between Officers and this may impact on the success of outcomes.

Depending upon case load and depending upon the issues they are dealing with, some Officers may become burdened with a higher number of conflict cases/mediations which may impact and decrease their enforcement productivity. Other Officers may not have enough cases and, therefore, they will not be able to maintain their competence in mediations. The potential cost for this model would be \$50,000.00 as well as ongoing training to maintain and refresh the MLEOs' skills. Also, there could possibly be increased costs overall because of Job Evaluation.

3. Refer to External Agency: Potential neighbour disputes could be referred to an external agency with no cost to the disputants. The Community Justice Initiatives is a not-for-profit organization that provides mediation in the Kitchener-Waterloo area. The Cities of Kitchener, Waterloo and Cambridge all refer disputants to this organization. The City of Kitchener also annually provides a small amount of funding. All mediators are trained volunteers. This option is a much more cost-effective approach; however, currently no such group is operating in the Hamilton/Halton area. Referrals could be made to local law groups/agencies; however, the potential cost for the disputants would not make it an effective or helpful offer.

4. Retain an External Mediator: The City could potentially enter into an agreement with an External Mediator at a fixed rate. The City would refer disputants to the retained Mediator who would provide the service. The potential cost of retaining an External Mediator has yet to be determined. Staff would need to undertake an informal request for information from prospective proponents in order to determine if it is more cost-effective to hire an Internal Mediator versus an External Mediator.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Direction could be given for staff to not pursue any further the creation of a mediation service for dispute resolution related to neighbourhood conflicts in Municipal Law Enforcement.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Growing Our Economy

- ◆ An improved customer service – providing specific assistance in resolving ongoing matters between neighbours and potentially improving relationships amongst neighbours, while indirectly reducing the number bogus and repeat complaints.

APPENDICES / SCHEDULES

Appendix “A” to Report PED11181– Overview of Mediation Supports in Other Canadian Municipalities.

JX/dt

Mediation Overview

Municipality	Process/Model
<p>City of Toronto</p>	<ul style="list-style-type: none"> ➤ There is no formalized process for mediation for neighbour to neighbour disputes. ➤ Officers usually act as the mediators – explain compliance requirements with respect to by-laws. ➤ There is a Fence Viewer Process – impartial third party appointed by the Property Standards Committee to resolve line fence disputes. ➤ If parties are unable to reach an agreement they may file an application for Fence Viewers to attend and they would award a decision. ➤ Initial fee for the process is \$1,100 – three fence viewers visit the site and discuss situation with owners involved. Owners are interviewed separately to determine all the issues involved in the dispute. The written decision of the Fence Viewers, the award, is not provided on site. ➤ The award specifies: <ul style="list-style-type: none"> - the location of the fence - description of the fence, including material to be used - maximum height of the fence - who will pay for the construction and/or maintenance of the fence - start and completion date of the work - who will pay the fence viewing arbitration - any other factors they consider relevant ➤ Decision can be appealed within 15 days of the receipt of the Fence Viewers award - \$50 processing fee is applied. ➤ Once fence is constructed without an agreement it does not fall under the jurisdiction of the Line Fences Act – this would be settled in a small claims court.
<p>City of Mississauga</p>	<ul style="list-style-type: none"> ➤ Initially was affiliated with a local community group providing mediation services, however since the closing of the group all counseling/mediation services have been cut. ➤ Over the past 2 years mediation service relationship was replenished with another community organization – <u>Dixie Bloor Neighbourhood Centre</u> ➤ In September 2010 City Council announced it will add conflict resolution service to its portfolio. ➤ 2011 Budget designates \$70,000 for the purpose of this working relationship.

Municipality	Process/Model
City of Burlington	<ul style="list-style-type: none"> ➤ City of Burlington does not provide such services and they are not considering providing it the near future.
City of Guelph	<ul style="list-style-type: none"> ➤ There is no formal program/model in place regarding mediation. ➤ Informally municipality mediates issues involving neighbour disputes, festivals, concerts in residential areas – issues regarding noise. ➤ Manager, by-law officer and legal would consult with parties at concern to try to negotiate a solution.
City of Brantford	<ul style="list-style-type: none"> ➤ There used to be a Fence Viewers Committee – the City doesn’t have it anymore. ➤ It was never successful. ➤ Committee was comprised of a City Clerk, Surveyor, Chief Building Official. ➤ Committee would listen to both sides and meet in private to discuss and make a decision ➤ There is always going to be a party dissatisfied with the decision made. ➤ Recommendation – “Don’t go there”.
City of Cambridge	<ul style="list-style-type: none"> ➤ City refers neighbour to neighbour disputes to an external non-profit organization – <u>Community Justice Initiatives</u> ➤ Municipality will inform individuals that the service is available. ➤ City does not provide any funding for it. ➤ Mediation service is completely independent of the municipality. ➤ There is no follow-up with the mediation association/organization with regards to the outcome/result of the process.
City of Kitchener	<ul style="list-style-type: none"> ➤ Mediation with respect to neighbour disputes is outsourced to an external non-profit organization. ➤ If certain circumstance comes up where mediation is required, Municipality will inform constituents of the available service. If both parties are willing to participate in the mediation process, the Municipality will fill out a form asking both parties to sign. The form will be faxed to the non-profit mediation organization who will contact the individuals to schedule separate meeting times. Interviews will be conducted individually with each party to get the fully story and process will begin. Following mediation, mediators will send a report back to the municipality informing them whether mediation was successful or not. ➤ Approximately 15-20 cases a year are referred for mediation.

Municipality	Process/Model
	<ul style="list-style-type: none"> ➤ Municipality contributes \$4,000.00 annually for the service regardless of the number of cases received/solved. ➤ Association providing mediation is <u>Community Justice Initiatives</u>. ➤ Municipality has been pleased with their expertise and mediation results. ➤ By having a mediation process in place it further assists with either avoiding charges or supporting them. <p>Director recommends:</p> <ul style="list-style-type: none"> ➤ Municipalities should impose mediation as a requirement in certain circumstances. ➤ Municipality must be able to recognize when mediation may be necessary (e.g. officer going to a particular property multiple times– no violation, minor violation, it is obvious that there is a neighbour relationship issue) ➤ When it is apparent mediation may be beneficial; municipality should offer the service and inform it is available by an independent organization separate from the Municipality. ➤ Emphasize it is voluntary and free of charge. This will provide for a more trusting relationship between the mediation association and the parties involved. ➤ If the complainant would like to go through mediation process, they need to be informed that their information will need to be released to the other party. As a result they won't be able to maintain their confidentiality of the complaint.
City of Waterloo	<ul style="list-style-type: none"> ➤ Mediation services are referred to Community Justice Initiatives. ➤ Both parties are informed and if they agree to attend, the case is referred to the non-profit organization. ➤ Mediator sends a letter back indicating whether mediation was successful or not. ➤ Mediation service is highly effective.
City of Brampton	<ul style="list-style-type: none"> ➤ Municipality does not get involved in neighbour dispute mediation. ➤ If there is a certain circumstance that requires mediation, it gets referred to – <u>Alternative Dispute Resolution Institute of Ontario</u>. ➤ Municipality does not provide any funding to the organization. ➤ Parties interested in participating in the mediation process will solely incur the costs of such process.

Municipality	Process/Model
	<ul style="list-style-type: none"> ➤ There may be some benefit to conducting mediation internally. However it would depend on the amount of resources that would be required and how much of it would really be used.
City of Welland	<ul style="list-style-type: none"> ➤ City of Welland is a small municipality, does not provide any mediation services. Officers only enforce by-laws and do the best they can to mediate. At this time not considering mediation services.
City of Ottawa	<ul style="list-style-type: none"> ➤ There is no official mediation process within the municipality. ➤ Officers informally try to mediate a situation and try to prevent it from escalating further.
Town of Oakville	<ul style="list-style-type: none"> ➤ Service is outsourced to a non-profit organization – <u>Oakville Mediation Association</u>. ➤ If there is a situation involving neighbour to neighbour dispute, this service will be referred through a mailed out pamphlet, suggested over the phone or communicated by an officer. ➤ Municipality provides some contribution to the organization. ➤ Municipality does not receive any feedback or outcome from the mediation process.
Town of Niagara-on-the-Lake	<ul style="list-style-type: none"> ➤ There is no official process regarding mediation for neighbour disputes. ➤ Since this is a smaller municipality, officers have enough time to dedicate to mediate a situation themselves. ➤ No need for a mediation service at this time.
City of Barrie	<ul style="list-style-type: none"> ➤ Wish they had a formal process in place, however they do not have any mediation services available aside from what they do internally to try to assist ➤ Have considered mediation training for the officers.
City of St. Catharines	<ul style="list-style-type: none"> ➤ There is no formal mediation process involving a third party. ➤ Manager may on occasion intervene as the mediator if officer is unable to resolve the situation. ➤ Previously had two neighbours come into office to try to work out a resolution. Also has met with them separately and suggested they work it out amongst themselves. ➤ Would like more information regarding how we move forward with our decision on mediation.
City of Windsor	<ul style="list-style-type: none"> ➤ No response
City of Oshawa	<ul style="list-style-type: none"> ➤ No response
City of Thunder Bay	<ul style="list-style-type: none"> ➤ Don't have third party mediation service available. ➤ Handle cases requiring mediation internally.

Municipality	Process/Model
	<ul style="list-style-type: none"> ➤ Wish they had the budget to be able to do it. ➤ Manager himself has mediation training, developing a training session for officers to transfer knowledge and share strategies.
City of Sault Ste. Marie	<ul style="list-style-type: none"> ➤ Left voicemail – no answer.
City of Victoria, B.C.	<ul style="list-style-type: none"> ➤ There is no formal process. Mediation done at officer level. ➤ Not considering outsourcing.
City of Calgary, Alberta	<ul style="list-style-type: none"> ➤ Mediate at an internal level as well as an external level ➤ Officers (referred to as Community Support Officers, Peace Officers) - certified through a mediation course they are obligated to take. ➤ If they are unable to mediate a situation they pass it on to an external organization - Community Mediation Calgary Society. ➤ Community Mediation Calgary Society is a non-profit organization with volunteers certified as mediators who provide a free of charge service to bring about resolution. ➤ The City does not provide any funding to them. ➤ The City’s approach and strategy is to provide awareness and education so there is less enforcement required. ➤ If enforcement, orders/charges are required it is looked upon as a failure from Municipality perspective. ➤ If there are properties where clean up is required but the property owner cannot afford it, the municipality has a fund they can draw from to do the clean up. ➤ There is a lot of education material available and there is staff specifically designated for the educating the public. ➤ Based on 6500 complaints there is less than 5% enforcement on the complaints as a result of having mediation services available. ➤ Due to the proactive mediation/negotiation approach, there has been a decrease in calls for Police Service. <p>Suggestions:</p> <ul style="list-style-type: none"> - Engage the community. - Educate on by-laws and expectations.

Municipality	Process/Model
	<ul style="list-style-type: none"> - Keep stats and good records on repeat offenders and compliance and successful collection of charges. - Engage the community by soliciting feedback with respect to how problems can be solved. - Reflect on by-laws (are they too restrictive, do they require changes). - Send staff for mediation training at a local college/university or have an in-house training session.
City of Charlottetown, Prince Edward Island	<ul style="list-style-type: none"> ➤ There is no formal process in place. ➤ Municipality tries to stay away from mediation. ➤ Officers do all they can when they are dealing with the Public. ➤ Sometimes Councilors may try to mediate a situation if it is required. ➤ Would like to hear more information with respect to how we move forward.
City of Regina, Saskatchewan	<ul style="list-style-type: none"> ➤ There is no mediation service in place for neighbourhood disputes. ➤ Use by-law to bring about compliance. ➤ Recommend any extremities to take legal action – small claims court. ➤ Agrees, mediation can be of great assistance in examples of barking dog complaints and in instances where individual has been charged and there is enforcement action on the property - where they don't have anyone to speak with about it. ➤ At this point in time the budget does not allow for additional resources to be allocated to provide such service. ➤ Interested in hearing more information and research around it.
City of Lethbride, Alberta	<ul style="list-style-type: none"> ➤ Discussed using a mediation organization for a particular case. ➤ Cannot decide whether or not municipality should endure costs of the mediation or if it shall upon the individuals involved. ➤ Recommended I speak with the supervisor to get more information regarding next steps.
City of Winnipeg, Manitoba	<ul style="list-style-type: none"> ➤ No formal mediation in place internally. ➤ If there is an issue (e.g. noise, dog bite etc.) it gets referred to private mediation company: Mediation Services - Community Resolution Centre 302-1200 Portage Ave. Manitoba, ON R3G 0T5

Municipality	Process/Model
	204 925 3426
City of Halifax, Nova Scotia	<ul style="list-style-type: none"> ➤ No formal process in place. ➤ Officers try to mediate situations as they arise, however for the most part if they do escalate to a point officer cannot assist it, civil action is suggested. ➤ Thinks mediation would be a very helpful tool.
City of Moncton, New Brunswick	<ul style="list-style-type: none"> ➤ There is no mediation service in place.
City of Vancouver, British Columbia	<ul style="list-style-type: none"> ➤ No formal mediation in place. ➤ Officer mediates to a certain level. If there is no success, he will inform constituents that it is a civil matter and they need to contact their lawyer. ➤ If one of the constituents keeps calling in to make complaints and if there is no legitimate concern/by-law infraction, a letter will be issued from the City stating that complaints for neighbour's property will no longer be validated. ➤ Not considering mediation services.