

Request for Decision

Review of Clearing of Yards and Vacant Lots By-law

Presented To: Operations Committee

Presented: Monday, Oct 22, 2012

Report Date Monday, Oct 15, 2012

Type: Managers' Reports

Recommendation

Whereas on July 10, 2012, Council asked staff to review the Clearing of Yards By-law for "fast tracking of minor issues"; and

Whereas the by-law does not distinguish between major or minor issues;

Now therefore Council is requested to receive this report and provide additional guidance and direction to staff on the report and matters listed for discussion in order for staff to implement improved timeframe with respect to clearing of lands by-law.

Background

This report responds to the direction by Council during Question Period on July 10, 2012, to agree to a review of the Clearing of Yards By-law. They agreed that the review should consider the possibility of "fast tracking" minor issues and that such review include input from front line By-law Officers.

By-law Officers charged with enforcement of the Clearing of Yards By-law were consulted and suggested the following improvements to speeding up the process of having properties cleared when the owner does not comply with a Notice.

There can be no distinction given to violations which are major or minor in nature, as the procedure for enforcement remains constant for all items of non-compliance.

Review

Clearing of Yards By-law - Procedures and Objectives

The Clearing of Yards By-law requires owners and occupants of land to clean and clear the land and remove debris and refuse, maintain the grass and other vegetation on the property and keep the yard free from conditions that may constitute a safety hazard. When enforcing the Clearing of Yards By-law, every effort is made to obtain voluntary compliance of by notifying the property owner or occupant of their

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responsibility to comply. When the owner cannot be reached, is absent, or does not respond to a verbal request of the officer, a Notice to Comply is issued.

The Notice to Comply is mandatory if the City intends to take remedial action to achieve compliance, pursuant to the Municipal Act, 2001, Sections 444 thru 446. The Notice to Comply sets out the nature of the violation as well as the date the owner is to rectify the conditions on the property so as to comply with the by-law. At a minimum, the compliance date must take into account the time to ensure delivery of the Notice and the time to appeal the Notice as set out in the by-law.

Unless the notice is delivered personally, it is effective 5 days after delivery. This time is set out in the by-law and reflects similar legislation and best practices. In most cases, the notice is delivered via registered mail because it is the most efficient and effective means to ensure and prove delivery of the notice.

An appeal process is also a requirement of the by-law and was implemented by a specific decision of Council at the time of enactment. The process for appeal is first to the General Manager of Growth and Development and then to the Hearing Committee. The time given to appeal the notice is 5 days from receipt of the Notice, as set out in section 23 of the by-law.

The time given for an owner to rectify the violations is termed "the compliance date". The compliance date for a Notice that is served via registered mail cannot be less than 10 days from the date of the Notice. If the notice is served personally, the date for compliance can be reduced to 6 days. The officer uses discretion in determining the compliance date of a Notice based on a number of factors, including the enforcement history of the property owner, and the safety risks that the violations present. The date provides for reasonable compliance on a Notice and is typically 2 weeks, unless extenuating circumstances prevail. This provides time for delivery, the time to appeal, and the time reasonably expected for the owner to complete the required work.

Factors Affecting Time for Compliance

The time for completion of a case when voluntary compliance cannot be obtained from the owner is dependent on a number of factors which may include the officers' ability to schedule inspections, and contact the owner to speak personally about the violations. The time required for service of the Notice, and the appeal period are also contributing factors as well as the time and resources required to carry out the process and conduct any required remedial action.

Scheduling Inspections - When a request for enforcement is received by the section, an officer must schedule an inspection and investigate the concerns. Inspections also are scheduled for follow up with the compliance date on a Notice. Officer availability, case load and priority determines the availability for an officer to schedule property inspections.

Contact with Owner/Occupant - The time to contact the owner of a property or the person responsible for the property also affects the time for case completion and/or compliance. The goal is to contact and speak to the person responsible and provide him with education and an opportunity to rectify the property without enforcement action, especially if there has been no prior enforcement conducted on the property.

Service of the Notice – As stated previously, if the Notice is hand delivered; service can be affected as early as the same day. This can be affected if the officer knows where the person will be during the time the officer attempts to serve the notice. Typically service of the notice is done via registered mail. Officer case

load as well as availability determines the time to create and send the Notice.

Appeal Period – The appeal period pursuant to the by-law is 5 days from receipt of the Notice. There is no statutory requirement for a by-law passed pursuant to the Municipal Act to provide an appeal period for persons receiving a Notice requiring them to comply.

Enforcement Resources – Officers carry approximately 50 to 100 outstanding by-law cases at any given time, depending on the time of year and the complexity of the cases. This affects the time to inspect, verify, contact owners and provide time to notify and attempt voluntary compliance. Additional time is required for the issuance and service of notices and orders, court preparation and attendance if charges must be laid. Priorities are given to each case, those higher in health and safety risks as well as those affecting the living standards of the public are given first priority.

Contractor Availability – When voluntary compliance cannot be achieved by the issuance of a Notice, the enforcement officer arranges with a contractor to undertake the remedial work to correct the violations. This may include the cutting of long grass and weeds, trimming trees and bushes, clean up of debris and waste, removal of derelict vehicles and/or the draining of pools and water. The time to complete remedial action is dependent on the type of work to be done, the equipment required, the cost of doing the work and the availability of the contractor and other resources, such as police or by-law enforcement officer presence.

The time for completion of a case when voluntary compliance cannot be obtained from the owner may be anywhere from 15 to 45 days depending on the contributing factors listed above.

Courses of Action for Reduction of Completion Time

The following possible courses of action may assist in reducing the completion time for compliance of all violations of the Clearing of Yards By-laws. The following Actions numbered 1 and 2 will require Council direction and Actions 3 and 4 are being implemented administratively.

1. Amend the By-law to Eliminate the Appeal Period - For Discussion

The By-law may be amended to eliminate the right of appeal for a person who is the subject of a Notice. Council implemented the appeal process during the enactment of this by-law in part to afford persons additional time for compliance if they were unaware of the regulations, or unable to maintain the property to the standards in the by-law. It also provides a review of the Notice by an independent body. This process although well intentioned for first time offenders, may not serve its purpose for owners that had been previously issued a Notice for the same property and the same violations.

Council may also consider eliminating the appeal process under the condition that the owner is a “repeat offender”. The removal of the right to appeal may be justified because the person ought to have known their responsibilities through previous experience with enforcement of the by-law and the process to maintain and upkeep the property. Past experience has shown that those “repeat offenders” have not exercised their right of appeal.

If the by-law was amended to eliminate the right of appeal to persons receiving a Notice the time required for remedial action would be reduced by 5 days, regardless of all other factors.

The officers currently use discretion in following up with the date for compliance with a Notice, if there is a reasonable expectation that the person responsible will do the work in the additional time given. If a person is in disagreement with contents of the Notice or the work required to be done, they are directed to

speak to the Manager of Compliance and Enforcement. The Manager will work with the Officer and the person receiving the Notice to ensure that the person understands what is required, the violations are reviewed, and any amendments may be done to the Notice with regards to the contents or the time for compliance. Except in cases where there is a blatant disregard for the by-law, or the contravention poses a public safety hazard all effort is made to work with the person to achieve compliance.

Experience has shown that in the previous 2 years, approximately 500 Clearing of Yards cases have been brought into compliance and only one appeal has been requested of the General Manager. The appeal was resolved in this first stage resulting in compliance with the Notice.

2. Increase Enforcement Resources: For Discussion

An increase in overtime hours or additional staffing for enforcement will decrease case load and increase completion time of cases. Most pressure is experienced during the seasonally warm months when grass is growing and people are outside enjoying their properties. This is also during the months when officer availability is low due to earned holidays. An increase in by-law enforcement staff resources temporarily during this time of the year or approval of overtime time hours would reduce response time and the time for case completion. The overtime costs for existing by-law officers paid at 1.5 times hourly wage at 24 hours each week for 6 months of the year amounts to approximately \$33,000. If a part time, temporary officer was hired for this purpose, for the same time period costs would be reduced to \$15,000 and the same officer if full time would still be more cost effective than the overtime option at \$20,000.

Due to the recent attention to the City's Attrition Policy and budget constraints, Council may not consider this as a viable option.

3. Increase Enforcement Penalties: For Administrative Implementation

For repeat offenders, a policy is currently being implemented that in addition to remedial action to rectify the conditions of a Notice that has not been complied with, the officer will be laying charges or fines against the offender. The by-law was enacted expecting voluntary compliance by all owners and occupiers of property. Experience has shown that some absentee land owners use the City's by-law staff and resources to maintain their property through enforcement and remedial action, instead of proactively, maintaining the property themselves. Increased enforcement through fines and penalties for repeat offenders will encourage voluntary compliance and responsible land ownership.

4. Tender Services for Remedial Action: For Administrative Implementation

Tendering services to complete remedial work and having a Vendor on Record is an opportunity to reduce time for completion of the work and will result in more competitive costs. Currently, when remedial work is undertaken, the officer may have to obtain 3 quotes from contractors. This may take up to a week before a contractor is hired to undertake the required work. Having a Vendor on Record for this service will result in significant time savings. There will be little time spent by the officer to obtain 3 quotes before the job is awarded as is in some circumstances, and the Vendor on Record will have a contractual agreement for response time and the time required to complete the work.

Conclusion

This report explains the procedures required of by-law enforcement to effect compliance with the Clearing of Yards and Vacant Lots By-law, 2009-101, as amended and provides a review of the time lines in that process. Staff enforcement officers were consulted and their views are included in the explanation of the

factors affecting the time to implement enforcement actions as well as possible options to reducing compliance time frames for all violations of the by-law, including those minor in nature.