

Type of Decision									
Meeting Date	Tuesday, May 15, 2018				Report Date	Monday, April 16, 2018			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE - By-Law Enforcement Policy									
Report #15/05/18 - 1201									

Subject: By-Law Enforcement Policy**RECOMMENDATION:**

That Council adopt the following recommendation.

Resolution

WHEREAS increased public dialogue has brought to light many actions which are contrary to existing municipal by-laws which require attention and enforcement;

AND WHEREAS there is currently not a policy and procedure for staff to follow to enforce existing municipal by-laws;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby adopt the attached policy as presented.

BACKGROUND/EXECUTIVE SUMMARY:

A municipality should have a by-law enforcement policy, as well as a plan and means to defend it if there is a legal challenge in the courts. Although Head, Clara & Maria has by-laws, there are few that require active management or enforcement. Even so, if a by-law is contravened, staff, and police if assisting, need to know how Council expects them to proceed.

It is also recommended that where by-laws are lacking, that they be re-enforced or strengthened. Further, where a by-law is required but not in force due to the fact that previous councils didn't want to over police its residents, that it be implemented. Not having a by-law where one is required is setting a dangerous precedent.

Over this past semester I have been completing AMCTOs Municipal Law Program via correspondence. Unit 1 has been completed but as usually occurs, with education comes the knowledge that we could be improving on current practices; hence the need for constant continued education. We don't know what we don't know.

We have long known that HCM has few by-laws which require active enforcement, much of that has been conscious and based on two facts

1. The wish of staff and council to "live and let live", past Council's did not wish to police its residents in many areas, that we all live here for the freedoms that rural living bring; and
2. the inability of the municipality to provide effective by-law enforcement.

For these reasons, HCM does not have property standards, snowmobile or atv by-laws. With the influx of users, residents and visitors, the "weekend warrior" mentality and the spreading on social

media that HCM is the “wild west” and has no policing, council might reconsider that. It has been recommended by many people during the stakeholder consultation sessions and might assist with eliminating some of the problems raised through this process.

In Ontario snowmobiles require a restrictive by-law and ATVs a permissive by-law. So, snowmobiles may travel on municipal roads unless the municipality restricts them. ATVs are not allowed on any road, unless a municipality allows them. Not wanting to become involved in a controversial topic, Council in the past avoided this issue. With all that is occurring recently and the potential for ATV clubs in HCM along with the trail bringing more traffic; it is time the Council address this issue considering such things as curfews, speed etc.

Without implementing new by-laws, recent consultation with residents has shown that there are significant issues which Council might be prudent to pay additional attention to. This may eventually require the hiring of a by-law enforcement officer.

Interestingly, increased education has taught that if municipalities choose not to enforce their by-laws, individuals can.

Although enforcing a by-law in the past has been considered a policy decision, which council could decide on a case by case basis whether or not to enforce its by-law; with the increasing focus on a private law duty of care it is recommended that Council have a policy which provides guidelines on when and how to enforce any by-law infraction.

Questions council has to ask as posed in the below referenced article are¹:

- 1. Once you commence enforcement proceedings, you may in effect have made a policy decision to enforce, even though you may have qualified your notice with respect to further action. (Eg. Please do x by a certain time. When that time comes and goes nothing further is done. This leaves the municipality in a precarious place legal wise.)*
- 2. You should always consider the consequences of your failure to enforce. Will someone be injured (whether physically or economically) if you do not proceed with enforcement? (And if so, will they come to you for compensation?)*
- 3. Are you acting at a reasonable speed? If you issue a notice of contravention requiring certain action, are you waiting too long for a response?*

“Accordingly, a municipality or a taxpayer is not precluded from applying to the court to restrain a by-law contravention even if the municipality has already prosecuted the infraction as a provincial offence and the offender has been convicted and assigned a fine or penalty.”²

“A taxpayer has no general power to enforce the by-law – a taxpayer can only restrain a contravention or breach of a by-law. For example, a taxpayer cannot apply to impose a penalty under the by-law or to seek any other remedy that would be generally available to the municipality for breach of the bylaw.

In Beer v. Hayes 2001

Ferguson, J. recognized that a municipality has a measure of discretion as to how it enforces its by-laws but that, in this case, the city had not acted in good faith and accordingly had to bear some consequences. The court awarded that the respondent pay the applicants fees – but then assigned them to the city instead. ²

Options/Discussion: and Future considerations

1. Pass the resolution bringing into effect a policy to guide staff in enforcing municipal by-laws using our current staff.
2. Not pass the resolution – leaving council in a vulnerable position by not having procedure for staff to refer to risking effective prosecution if required.
3. Continue to not enforce municipal by-laws risking that ratepayers may do so and the municipality risks being responsible for costs.
4. Begin the process of actively enforcing by-laws to ensure that people will respect the law and rules of the Council. Remove the “wild west” title.
5. Consider hiring a by-law enforcement officer whose sole purpose would be to enforce municipal by-laws to ensure that Council directive is being followed.

Others Consulted/Resources:

¹Is There a Private Law Duty to Enforce Municipal By-Laws? Charles M. K. Loopstra Q.C.

²<http://www.imla.org/images/2011conf/papers9125as/Mascarin-IMLA%202011%20-%20Restraining%20By-law%20Contraventions%20DOCX.pdf>

MLP Unit 1 – Introduction to Municipal Law

Set Fine Application Best Practises Manual - Ministry of the Attorney General - Crown Law Office-Criminal - September 2016

Provincial Offences Act R.S.O. 1990, c. P. 33

BYLAW ENFORCEMENT: BEST PRACTICES GUIDE FOR LOCAL GOVERNMENTS -
<https://www.bcombudsperson.ca/sites/default/files/Special%20Report%20No%20-%2036%20Bylaw%20Enforcement%20-%20Best%20Practices%20Guide%20for%20Local%20Governments.pdf>

Zorra – By-Law Enforcement Policy - <http://www.zorra.on.ca/Home/Our-Services/By-law-Enforcement>

City of Hamilton By-law Enforcement Policy - <https://www.hamilton.ca/government-information/by-laws-and-enforcement/register-by-law-complaint>

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

Melinda Reith