

STAFF REPORT: Planning & Building Department



REPORT TO: Planning & Building Committee
MEETING DATE: August 3, 2011
REPORT NO.: B.11.27
SUBJECT: Service Delivery Review - By-law Services
PREPARED BY: Greg Miller, Manager Building & By-law Services/CBO

A. Recommendations

THAT Council receive Staff Report B.11.27 respecting Service Delivery Review - By-law Services.

B. Background

At its meeting of July 4, 2011, the Planning & Building Committee considered Staff Report PL.11.67 with respect to Service Delivery Review. The recommendations contained in the Report were adopted by the Committee with the Committee's report being subsequently adopted by Council at its meeting of July 11, 2011.

The Committee's report indicated the following:

D.1 THAT the Planning & Building Committee receive Staff Report PL.11.67;

THAT the Planning & Building Committee acknowledge that the Operational Review of the Town's Ontario Building Code Program addresses Council's request for a comprehensive review of level of service for said program; and,

THAT the Planning & Building Committee adopt the Service Delivery Review Template as set out in this Report with respect to Planning Services & By-law Services **unanimously CARRIED.**

The Service Delivery Review Template set out in the Report is as follows:

1. Mandate of the Work Group
2. Historical and Current Staffing Levels
3. Summary of Services Provided
4. Identification of Mandatory versus Discretionary Services
5. Staff Rating Criteria (Mandated by Legislation/Core Function/Desirable)
6. Statistical Trends Analysis
7. Review of Expenditures and Revenues
8. Needs Analysis

OVERVIEW AND MANDATE OF BY-LAW SERVICES

The By-law Services Division mandate is guided by municipal by-laws and provincial legislation including the *Municipal Act*, *Building Code Act*, *Highway Traffic Act*, *Dog Owner's Liability Act* and the *Provincial Offences Act* to name a few. The following is a summary of the core services provided:

Animal Control

- Dogs at large control
- Dog bite legislation enforcement (*Dog Owners Liability Act* or DOLA)
- Dog licensing
- Rabies Control
- Reuniting lost dogs with owners

Building Code Act

- Protection of the health & safety of the public
- Construction without the benefit of a building permit – enforcement
- Compliance with Orders
- Regulating Unsafe Structures

Long Grass & Noxious Weeds By-law

- Unightly yards within the non-agricultural area of the municipality
- Noxious weeds, including Hogweed and Poison Ivy, within the non-agricultural areas of the Town

Municipal By-law Enforcement & Public Liaison

- Numerous municipal by-laws enforced (see Chart 2)
- Liaising with the public with respect to municipal by-laws

Noise By-law Enforcement

- Non-public disturbance type complaints (faulty and/or disturbing mechanical equipment, construction noise, etc.)
- Liaising with the public re enforcement of the Town's Noise By-law

Property Standards

- Maintenance of existing buildings, structures and vacant lots within a defined area of Town
- Debris and Refuse

Provincial Offences Act Prosecutions

- MLEO DeWitt is a paralegal licenced by the Law Society of Upper Canada and provides prosecution services for the Town.

Parking Control

- Patrol illegal parking
- Enforce illegal parking in designated fire routes
- Patrol illegal parking in designated accessible parking spaces
- Assist in snow removal operations by patrolling overnight parking

- Managing the parking on private property parking program (22 private MLEOs)

Security Alarm Registrations

- Administering the registration of residential and commercial security alarm systems
- OPP false alarm dispatch follow up (invoicing and collection of fees related to false dispatches)

Short Term Accommodation

- Currently logging complaints and creating “pending” enforcement files
- Additional Significant workload and resources required pending OMB decision

Sign By-law Control

- Administering and Issuance of sign permits
- Sign By-law Variances
- Patrolling illegal signs
- Responding to illegal sign complaints

Weed Control Act

- Enforcement of the *Weed Control Act*
- Proactive involvement with Giant Hog Weed and Wild Chervill

In addition to the above core services, By-law Services is responsible for the enforcement of over 40 by-laws for the Town and the administration of the Province’s Wildlife Damage Compensation Program.

Complaint Management

By-law complaints are received through the By-law Services Division by telephone, email, written letter or through the new online service available on the Town’s website. Once a complaint is received, each complaint is logged into the CityView database system with such information collected as the location, type and general description or the complaint. Once logged, one of the two Municipal Law Enforcement Officers contacts the complainant – in most instances within 48 hours and an investigation is commenced. In some cases, the complainant’s concerns are addressed via telephone or email.

In 2008, staff adopted a policy that the proponent (violator) of the property in question would be contacted by telephone prior to sending out infraction notices or warnings. This has garnered a very positive response in resolving complaints and has improved efficiency though reduced communication and compliance times.

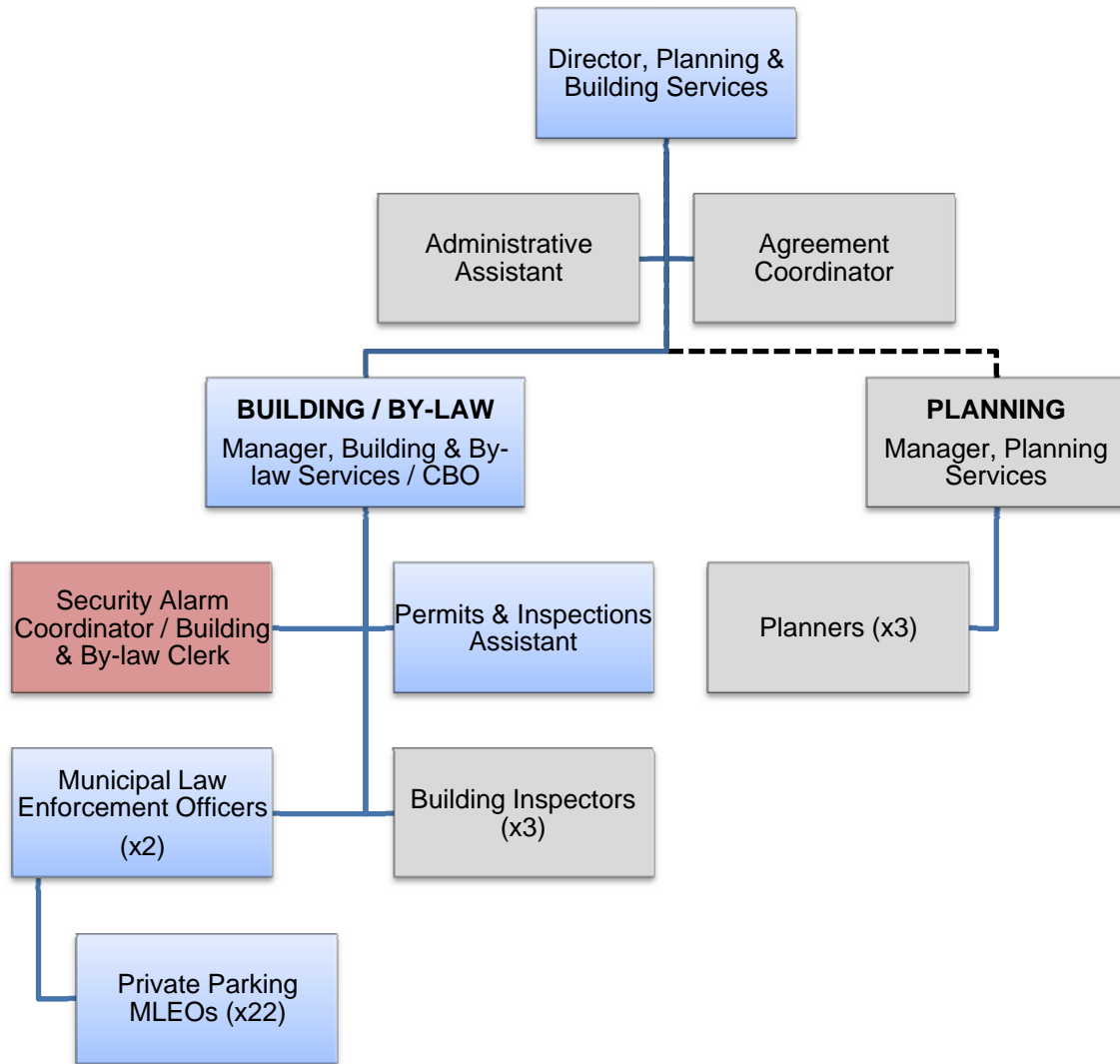
By-law enforcement is administered by issuing warnings, orders, tickets, fines and lastly court action.

BY-LAW SERVICES - STAFFING LEVELS

The following organization chart, Chart 1, reflects the current staffing of By-law Services. Currently, the Security Alarm/By-law Clerk position is vacant due to a staff member moving on to another organization. Filling this position has been problematic in finding a successful and qualified individual given the scope/extent of the position (2.5 days/week).

Currently, there are two municipal law enforcement officers (MLEO) that are responsible for the enforcement of various by-laws including property standards, zoning, parking, animal control and several other municipal by-laws. Save and except for animal control, both MLEOs must be familiar with all by-laws enforced by By-law Services Division. Only one MLEO is specially trained in animal control (including specific training to save guard the individuals health and safety).

Chart 1
Planning & Building Services Department
Organization Chart



MANDATORY VERSUS DISCRETIONARY SERVICES

Town by-laws are enforced primarily on a complaint basis, save and except for *Building Code Act* and Fire Routes and are shown with rating level of 1, Mandated by Legislation, as illustrated in Chart 2, “Service Level Matrix”. The Service Level Matrix has been considered each year by Council for the past 7 years as part of the budget process.

Staff have reviewed by-laws currently enforced and each was assigned a rating criteria. Level 1 is reflective of service which is mandated by legislation (i.e. the Town must administer and enforce). Level 2 being a level for which a by-law is administered and enforced as part of the core services and/or traditional services provided by a

municipality (Property Standards, Parking Control, Security Alarm and Animal Control in addition to *Building Code Act* and Fire Route enforcement) and Level 3 being assigned to a by-law that has been deemed by council to be desirable for this community.

With respect to municipal by-laws, Town Council has the discretion of deciding which by-laws to enact and enforce. Council makes decisions based on what Council determines to be the priorities and/or needs of the community as well as those actions that will maintain or enhance the quality of life, health and safety of the residents of the community, to protect or safeguard the environment and lastly, the reputation of the community. Council must weigh the impacts of non-enforcement to that of the expectations of the members of the community and the level of risk exposed for non-enforcement versus the benefits of cost saving measures.

An article in an Alberta law firm's (Brownlee Fryett) quarterly newsletter, *Municipal Law, March 2003* reviews in detail and poses the question of "Should we or shouldn't we" enforce municipal by-laws. This article is attached to this report for reference. The newsletter highlights the findings of the Supreme Court of Canada case, *1998 Kamloops vs. Neilson*, which tested the question of municipal liability for non-enforcement of a by-law. The authority described allows a municipal council the option of non-enforcement and that decisions of Council must be made in good faith and in consideration of legitimate policy concerns. The article further suggests the reason for non-enforcement of by-laws are:

1. Financial costs of enforcement staff for enforcing by-laws and the litigation required which may not be a priority in financial restraint; and
2. A by-law may become out-dated. A reason may be that the original issue of enacting the by-law may no longer in fact be an issue.

The degree of exposure to municipal liability for non-enforcement of municipal by-laws is the impact on the health and safety and the duty of care to actively enforce by-laws. Further, the language within a by-law may set expectations for the level of enforcement. Where the word "*shall*" is used then a reasonable level of enforcement is mandatory as opposed to the term "*may*" which implies that a municipal council has the discretion to enforce a by-law or not. Finally, the article suggests that a municipal council may want to consider rescinding a by-law that is not enforced to avoid any issues of non-enforcement.

Chart 2
 By-law Services: Service Level Matrix

		PROACTIVE	PATROL	COMPLAINT			
Alteration of Grade/Fill By-law	2002-78		•	•		•	3
Agreements	Municipal Act			•		•	2
Abandoned Orchards	2003-38			•		•	3
Building Code Act	BCA	•	•	•	•		1
Civic Addressing	95-35			•		•	2
Dog-at Large/DOLA/Stoop & Scoop	2006-32			•		•	2
Fence By-law	2003-14			•		•	3
Fire Arm Discharge	2005-55			•		•	3
Fire Routes*	2001-88	•	•	•	•		1
Georgian Trail				•		•	3
Fortification	2009-17			•		•	3
Littering	99-10			•		•	3
Livestock, Poultry & Honey Bee Protection Act	LPHPA			•		•	1
Long Grass/Noxious Weeds	2003-25			•		•	2
Noise	2002-09			•		•	2
Nuisance	2004-23			•		•	3
OPP Liaison	Policy	•				•	3
Parking - Disabled Person Parking	2004-116	•	•	•		•	2
Parking - Privately Owned Land	2007-12			•			2
Parking - Town Owned	2007-12		•	•		•	3
Regulate Uses on Town Land - No Camping	2003-39			•		•	3
Property Standards	2002-18			•	•		2
Roads - Deposit of Ice & Snow	2004-125			•		•	3
Roads - Driveways and Parking Access	2002-47			•		•	3
Roads - Entrances and Mailboxes	95-29			•		•	3
Roads - Events and Temporary Closing	2005-34			•		•	3
Roads - Landscaping in Town ROW	99-53 (Policy)			•		•	3
Roads - Load Restrictions	2006-16			•		•	3
Roads - Obstructing & Damaging	95-29			•		•	3

Roads - Objects In or On Town Owned	99-53							3
Security Alarm By-law	PSB 2007-01	●					●	2
Short Term Accommodation	2008-12						●	2
Sidewalk Use	2004-34						●	3
Sign By-law (Permanent Signs)	2001-57						●	2
Sign By-law (Temporary Signs)	2001-57						●	2
Swimming Pool Fence	2002-8		●				●	2
Tree Preservation	2010-68						●	3
Solid Waste Collection	16/03						●	3
Watering Restrictions	2008-02						●	3
Weed Control Act	WCA (Policy)						●	2
Zoning By-law	83-40, 10-77						●	2

*Rating Criteria
 Level 1: Mandated by Legislation
 Level 2: Core Service
 Level 3: Desirable

Chart 3 summarizes the volume and type of by-law complaints received since 2006. The by-law complaints highlighted represent the 5 highest categories for complaints received during his timeframe. On average the total number of complaints received between 2006 and 2010 represent 62.6 complaints per 1,000 people based on the 2006 population of 6,825 (2006 census).

**Chart 3 - By-law Complaint Activity
 2006-2011 (YTD)**

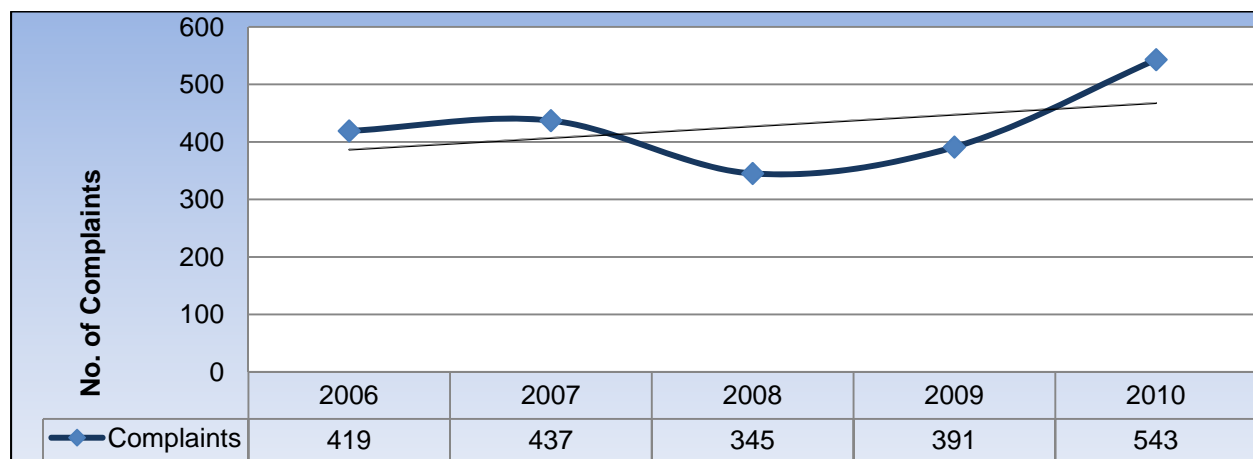
BY-LAW	2006	2007	2008	2009	2010	2006 - 2010		2011*
						TOTAL	AVG	
Abandoned Orchards (2002-78)	1	1	1	0	4	5	1	0
Building Code Act	15	13	17	31	49	97	25	25
Civic Addressing (95-35)	2	106	3	3	3	9	23	1
Deposit Ice and Snow on Municipal Roads (2004-125)	80	0	12	5	18	35	23	2
Disabled Person Parking (2004-116)	42	0	1	2	0	3	9	0
Dog Licence (2006-32)	0	0	0	0	1	1	0	0
Dogs (2006-32)	19	57	44	56	32	132	42	37
Fence (2003-14)	7	4	3	5	7	15	5	0
Fill/Grading (2002-78)	3	4	6	21	8	35	8	1

Fire Routes (2001-88)	2	0	0	1	0	1	1	0
Littering (99-10)	3	1	0	4	12	16	4	10
Long Grass/Noxious Weeds (2003-25)	101	100	62	98	98	258	92	42
Municipal Works	0	0	12	1	11	24	5	2
Noise (2002-09)	5	12	22	33	27	82	20	4
Parking (2007-12)	15	1	1	6	5	12	6	0
Property Standards (2002-18)	45	40	51	74	56	181	53	20
Public Nuisance (2004-23)	4	6	3	7	13	23	7	4
Short Term Accommodation (2008-12)	0	0	0	2	163	165	33	11
Sign (2001-57)	18	22	20	12	13	45	17	36
Site Plan Agreement	2	2	0	3	3	6	2	4
Snowmobile (12th Line 99-67)	0	0	0	0	1	1	0	0
Swimming Pool Fence (2002-08)	6	13	5	1	1	7	5	0
Tree Preservation (2010-68)	0	0	0	0	0	0	0	1
Waste Collection (16/03)	8	10	0	5	2	7	5	2
Watering (2008-02)	20	22	0	1	5	6	10	2
Zoning (83-40 & 10-77)	21	23	12	17	11	40	17	13
TOTAL	419	437	345	391	543	1206	427	217
No. of Complaints/ 1,000 Population	61.4	64.0	50.5	57.3	79.6		62.6	

* End of June 2011

Figure 1 illustrates the number of by-law complaints received on an annual basis over the past 5 years. Of note the number of by-law complaints has risen by 57% since 2008 due in large part to increased *Building Code Act* enforcement and Short Term Accommodation complaints.

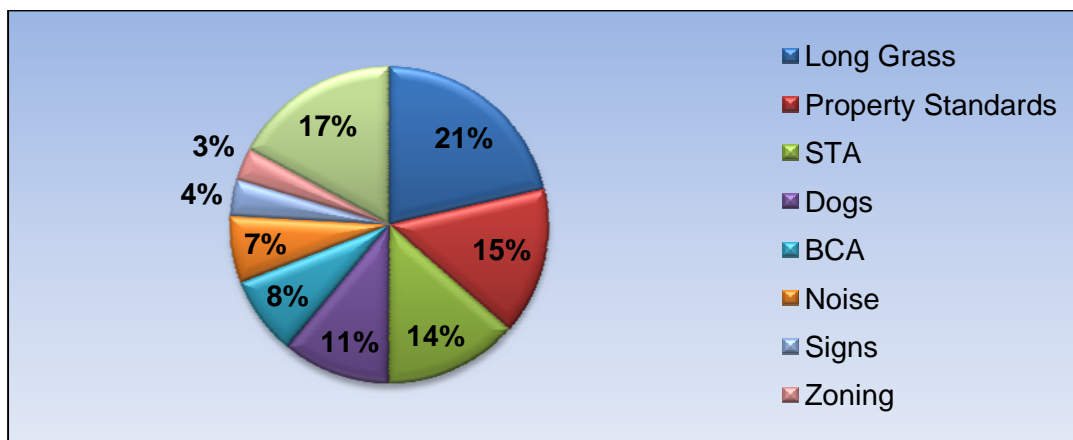
**Figure 1 - By-law Complaint Activity
2006-2010**



By-law Services has received 1,206 recorded complaints since 2006 (not including 2011 figures). Figure 2 illustrates that the summary of the type of complaints received during the past 5 years with Long Grass complaints at 21% of the total (the highest category) ,

Property Standards at 15%; Short Term Accommodation at 14%; Dogs at 11% and Building Code Act at 8% of the total number of complaints received.

**Figure 2 - By-law Complaint Volume
 2006-2010**

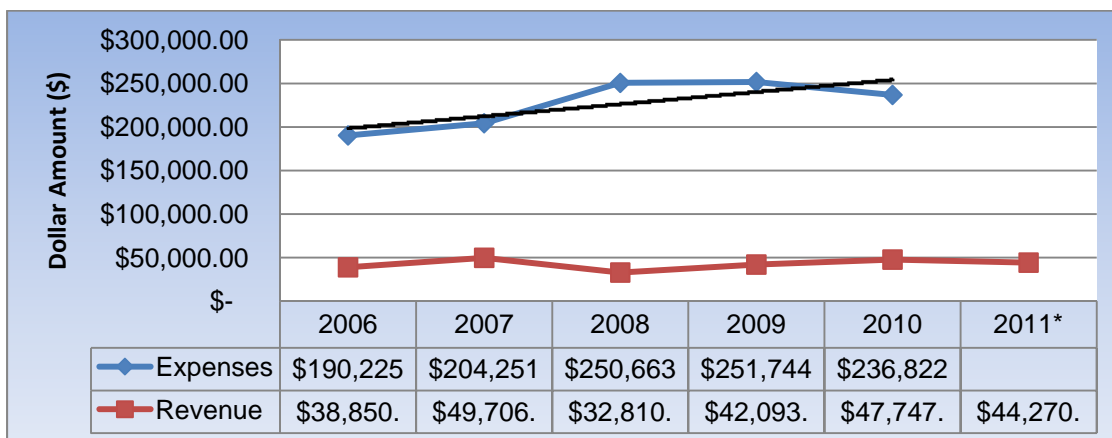


REVIEW OF EXPENDITURES AND REVENUES

Figure 3 illustrates the expenses and revenues on an annual basis from 2006 to 2010 and reflects that:

- Expenses have increased by \$46,600 or 24.5% since between 2006 and 2010 with Staff salaries and benefits account for 75% of the expenses.
- On average expenses are 5.5 times revenue, meaning that for every \$1 of revenue; \$5.50 is being expended.
- Expenses occurred in 2010 were \$14,922 lower than 2009: a 6% decrease.
- At the end of 2011, revenue is at \$44,270.00 with 6 months remaining and slightly above the 5 year average of \$40,884.00 between 2006 and 2010.

**Figure 3 - By-law Services: Expenses & Revenues
 2006-2011 (YTD)**



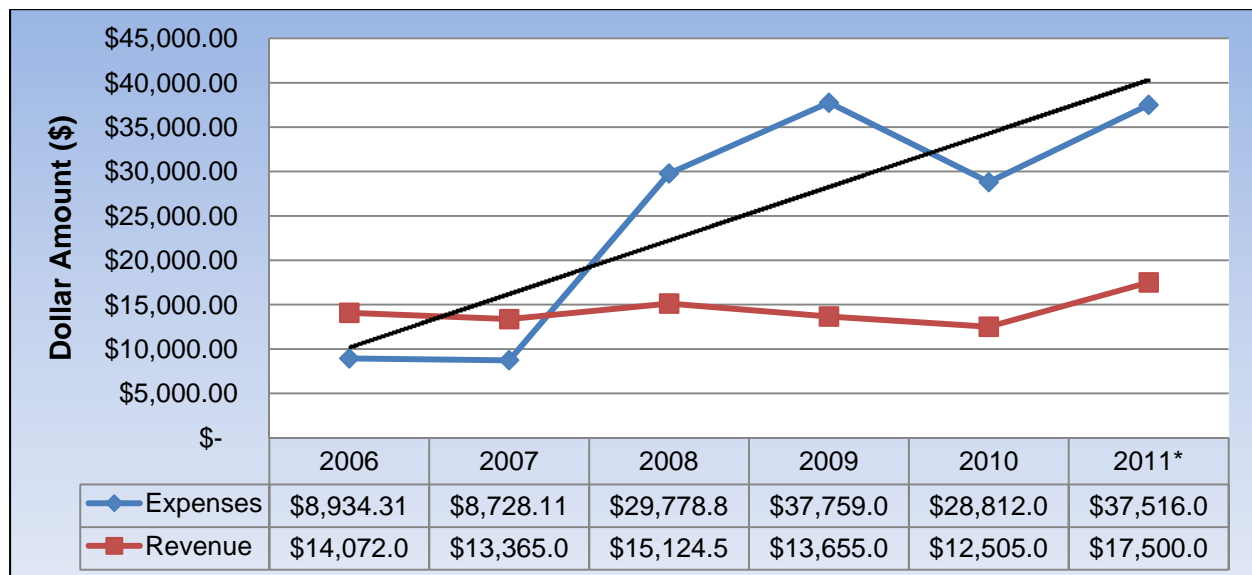
*YTD to end of 2011

Figure 4 illustrates the expenses and revenues for the Animal Control Program over the past 5 years. Since 2006:

- Expenses have averaged \$32,100 per year (not including 2011 figures);
- Revenue has averaged \$13,800 per year for a total of \$41,285.00;
- Expenses exceed revenue by a factor of 2.3 on average, meaning for every \$1 of revenue, \$2.30 is being expended;
- Based on a population of 6,825 (2006 census), expenses are \$4.70 per capita or \$5.71 per household on average ;

The 2011 approved budget reflects an expense and revenue factor of 2.1 with salaries and benefits comprising of 56% of the expenses.

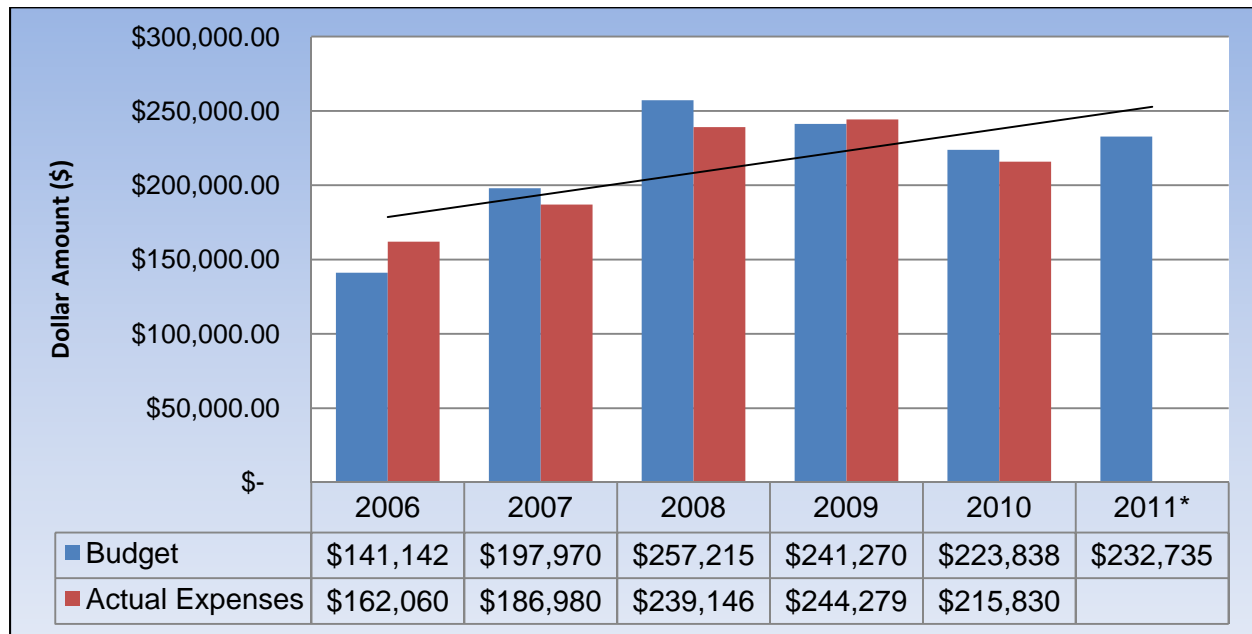
**Figure 4 - Animal Control: Expenses & Revenues
 2006-2010**



*2011 budget

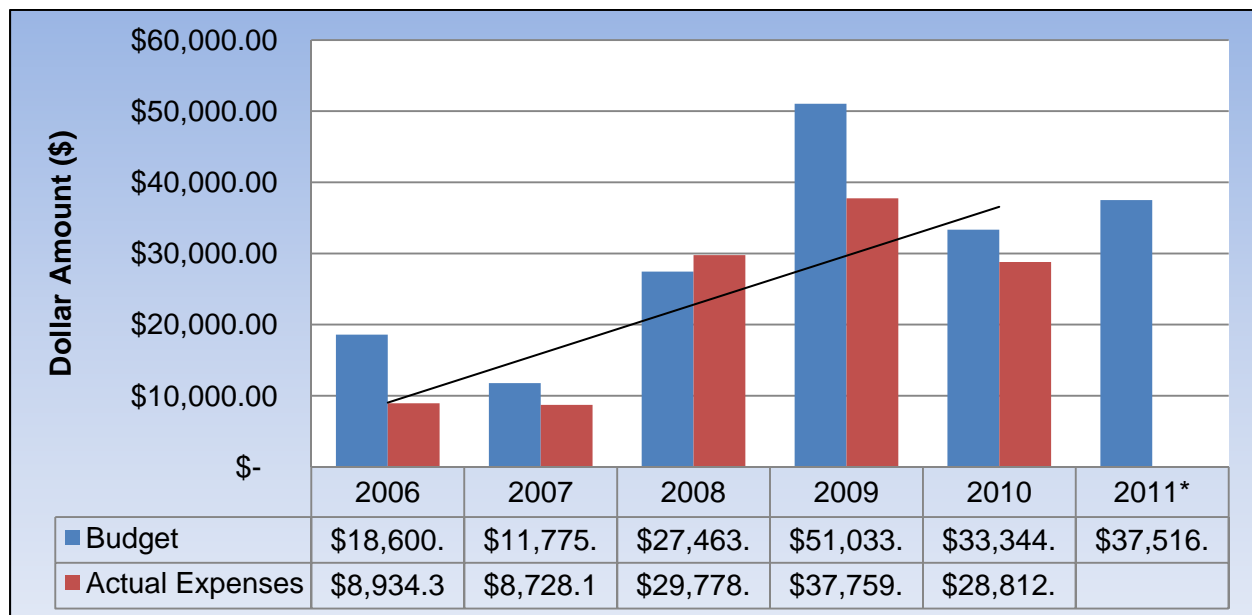
Figures 5 and 6 depict Budget vs. Actual Expenses related to By-law Services.

**Figure 5 - By-law Services: Budget vs. Actual
 2006-2010**



*2011 Budget

**Figure 6 - Animal Control: Budget vs. Actual
 2006-2010**



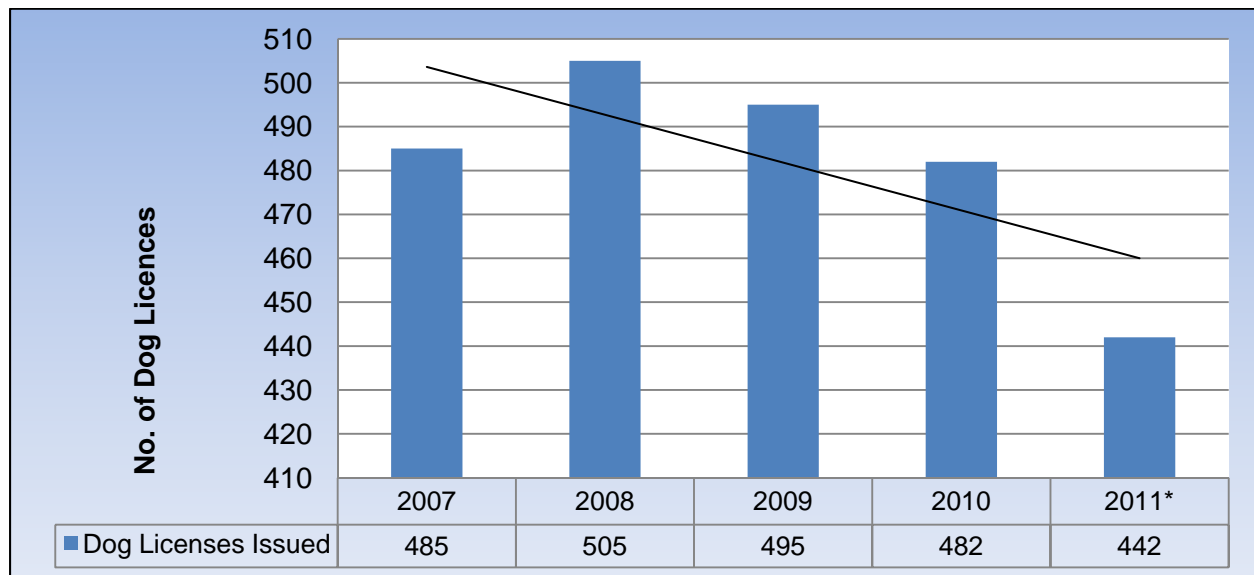
*2011 Budget

Figure 7 illustrates the number of dog licences issued on an annual basis since 2006. Of note, the number of dog licenses issued is down 5% from a high of 505 in 2008. These are issued on a voluntary basis, meaning that responsible dog owners licence their dogs with no proactive enforcement of Staff.

The following is the current dog licence fee structure (By-law 2006-32):

First Dog:	\$25
Second and each additional dog:	\$30
First Neutered/Spayed Dog:	\$15
Second and each additional Neutered/Spayed Dog:	\$20
Replacement Tag:	\$10
Kennel Licence:	\$150
Seizure fee for Dogs at large:	\$25 if licenced \$50 for non licenced
Impounding:	\$50 seizure fee + Pound Administration Fee, Daily Impound Fees and other Fees.

**Figure 7 - Animal Control: Dog Licenses Issued
 2006-2011**



* June 2011

Figure 8 illustrates the Parking Infraction Notice (PIN) revenue between 2006 and June 2011.

The year to date revenue for 2011 is \$31,540 compared to \$26,360 in 2010; a 20% increase with six months of reporting remaining in 2011.

**Figure 8 - Parking Control: Revenue
2006-2011 (YTD)**

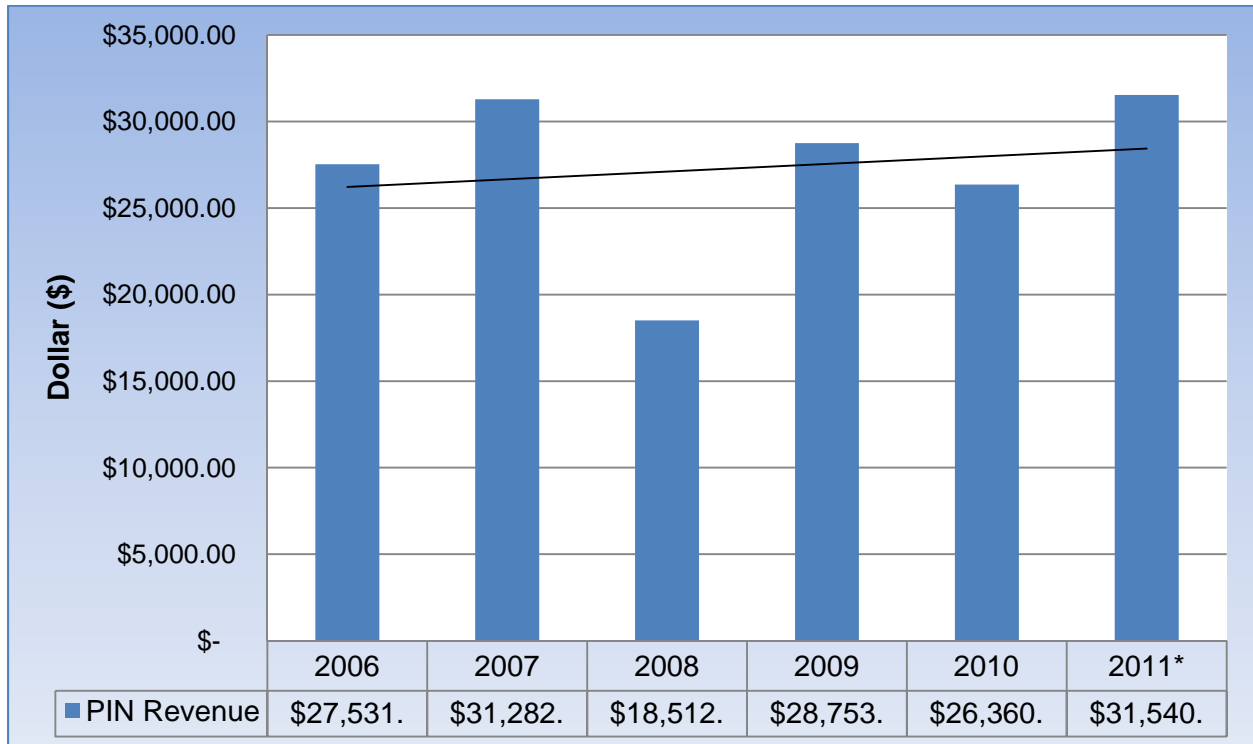


Chart 3 summarizes the number and type of parking infraction notices issued between 2006 and year to date 2011.

**Chart 3 - Parking Control: Parking Infraction Notices (PIN)
2006-2010**

PARKING INFRACTION NOTICES ISSUED	PIN Amount		2006	2007	2008	2009	2010	2006 - 2010		2011*
	Set Fine	After 15 Days						TOTAL	AVG	
Park on Sidewalk	\$17.00	\$25.00								
Park in front of Driveway	\$17.00	\$25.00								
Park within 3.0m of fire hydrant	\$17.00	\$25.00								
Park in a manner to obstruct traffic	\$50.00	\$ 50.00								
Overnight Parking	\$ 27.00	\$ 40.00	0	0	51	107	150	308	62	9
					16.3%	20.4%	20.2%	25.4%		
Park, stand or stop on street prohibited by sign	\$ 27.00	\$ 40.00								
Park on street exceeding time limit posted by sign	\$ 10.00	\$ 15.00								
Parking on Private Property w/o Consent	\$ 50.00	\$ 75.00	0	0	49	197	400	646	129	385
					15.7%	37.5%	54.0%	53.3%		
Fire Routes	\$ 75.00	\$ 75.00	15	13	59	81	62	230	46	26
					18.8%	15.4%	8.4%	19.0%		5.2%
Disabled Person Parking	\$300.00	\$300.00	0	0	12	6	10	28	6	1
					3.8%	1.1%	1.3%	2.3%	2.1%	
TOTAL			15	13	171	391	622	1212	181	421
					313	525	741			504
Paid by Paytickets.ca							71			258
							10%			51%
Trial Requests					18	26	39	83	28	39
					5.8%	5.0%	5.3%	5.3%	5.3%	8%

*June 2011

Figure 9 illustrates the percentage of PINs issued between 2006 and 2010.

The highest category of PINs issued is under by-law 2007-12: Parking on Private Property without the Owner's Consent, a by-law that regulates parking lots on private property with 63% of the PINs issued. The majority of the private parking lots regulated are within the Village Core Area. Under this by-law, 22 private Municipal Law Enforcement Officers have been appointed by Council to enforce parking. Each person is employed by a property management company or security company with security background checks and training provided on an annual basis.

In 2010, online payment of PIN's was initiated to improve our service delivery to our customers and allows them to pay PIN's through the Paytickets.ca web service. As shown in Chart 3, "Parking Infraction Notices 2006-2010" - only 10% of the total PINs issued was paid online, however, so far in 2011 this number has dramatically increased to 51% of the total PINs issued. The online project cost approximately \$6,000 to implement and has improved efficiencies with:

- Reduced time at the front counter to process payments by Staff.
- Reduced front counter time with Staff explaining parking by-laws, process, etc. and reducing the number of threatening verbal abuse incidents;
- Reduced time balancing deposits by Staff as payments are automatically deposited into the Town bank account; and
- Reduced number of visits to Town Hall by our customers and not having schedule around normal office hours as payments can be made online at anytime.

**Figure 9 - Parking Control: Parking Infraction Notices (PIN)
2006-2010**

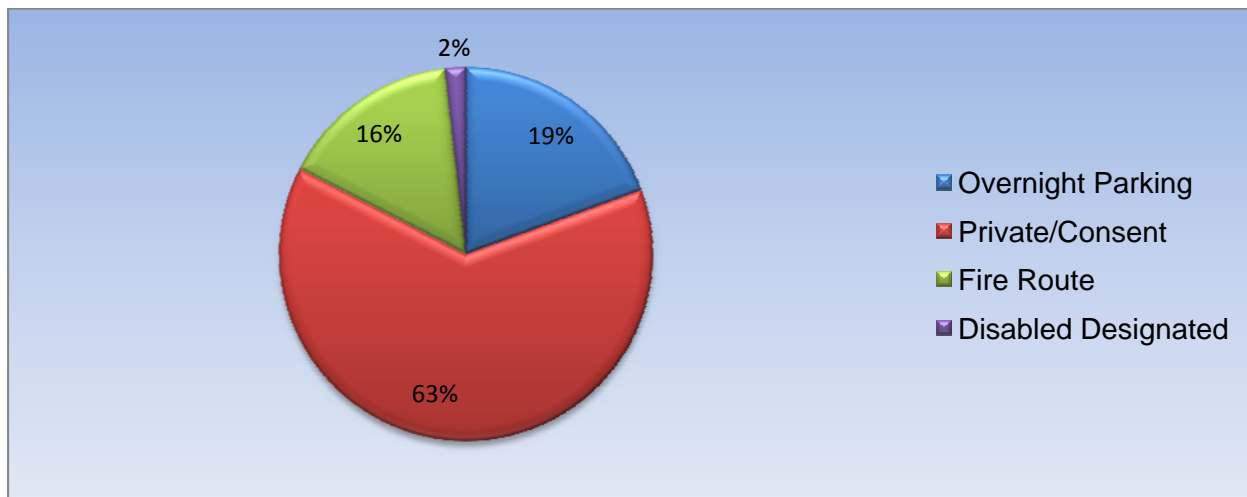
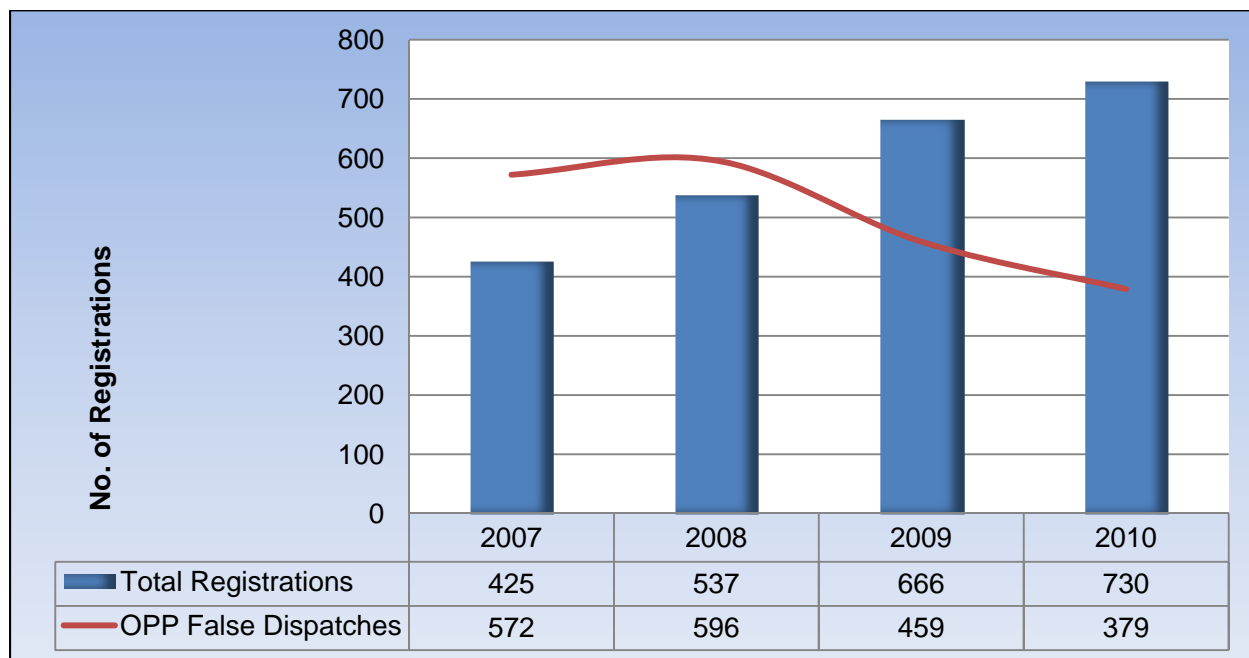


Figure 10 illustrates the number of OPP false alarm dispatches and the number of total security alarm registrations between 2007 and 2010. The Security Alarm Registration Program was implemented in 2007.

Figure 10
Number of Security Alarm Registrations
vs.
OPP False Alarm Dispatches
2007-2010



The false alarm dispatch rate, as shown in Chart 4, is determined by dividing the number of OPP false alarm dispatched by the number of total registrations. This number has decreased dramatically where in 2007, the OPP attended to 1.35 false alarms per year per system whereas the rate has decreased to 0.52 false alarms per year per system, and:

- The percentage of total registered alarms are 96% residential and 4% non-residential premises.
- *The OPP false alarm dispatch rate has decreased by 61% from 1.35 in 2007 to 0.52 in 2010.*

Chart 4
False Alarm Dispatch Rate

	2007	2008	2009	2010	2011*
False Alarm Dispatch Rate	1.35	1.11	0.69	0.52	0.20

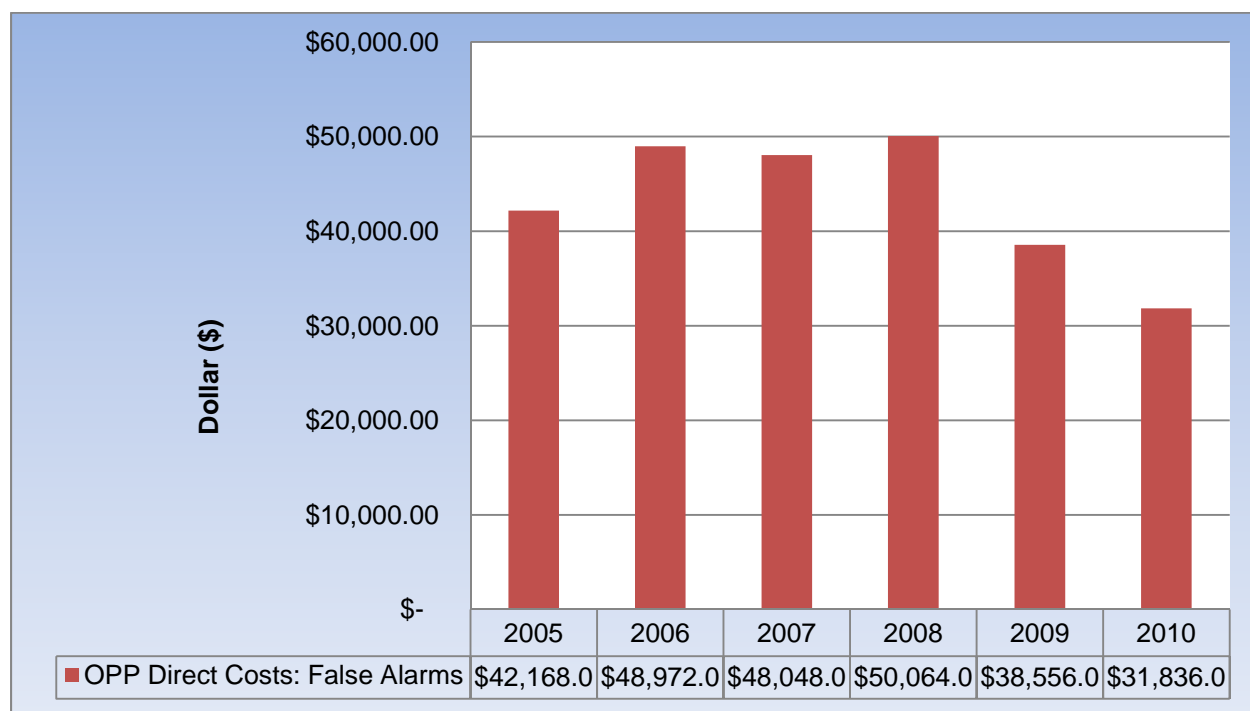
*2011 YTD

Figure 11 illustrates the OPP direct costs incurred in relation to false alarm dispatches between 2006 and 2010.

- OPP costs are based on 2 Officers (2 cruisers) at \$184/hour.
- OPP estimate time of 0.5 hours spent for a false alarm dispatch.

The success of the Security Alarm Program since its inception in 2007 has reduced the direct cost associated with false alarms by \$18,278.00 to \$31,836.00 from a high of \$50,064.00 in 2008; a 37% decrease.

**Figure 11 - OPP Direct Costs: False Alarm Dispatches
2006-2010**



NEEDS ANALYSIS

With respect to By-law Services, workload is principally driven by the number of complaints lodged with the municipality. Factors affecting complaints include population growth, expectations of residents and changing social demands. In addition, the increased number of visitors to the community also impact workload as it relates to matters such as parking enforcement.

By-law Services current focus is on maintaining the level of service provided despite increasing demands. As the population of the community and tourism increases, so does workload. Annually, through the Budget Process, the ability to continue to maintain service levels is reviewed. An enhanced level of service has not been

considered over the past few years due to increasing workload. In this regard, By-law Services continue to forewarn other work groups in the Corporation that By-law Services cannot support new initiatives and/or enforce new by-laws given current and expected workload. Each time a new municipal by-law comes forward, Staff must ask the question of how enforcement will be operationalized (be it a Parks Use By-law or a Stormwater Management Pond By-law).

The primary pressure point related to By-law Services is enforcement of the Short Term Accommodation Zoning By-law Amendment. The anticipated staffing needs related to meaningful enforcement of this initiative have been provided to Council over the past number of years.

COSTS ASSOCIATED WITH BY-LAW ENFORCEMENT

Staff reviewed the approximate time to process a complaint file from the date of receipt to the date of close out. This is summarized in Chart 6, "Estimated Complaint File Processing Times" attached to this report.

The timeframes represent all steps associated with processing a complaint file. It should be noted that prosecution and court times are in addition to these assigned timeframes.

Reviewing the timeframes from Chart 6, a dog at large complaint takes an average of 4.1 hours from the time the MLEO captures the dog at large to the time it is dropped off at the pound for processing. Processing includes verification of rabies, dog license, health check, etc. The staff wage and benefits component associated with a dog at large is just under \$150. Costs such as vehicle and other operating costs are not included in this number.

As highlighted earlier in this report, long grass complaints are the highest number of complaints received by volume. The 5 year average from 2006 to 2010 is 92 long grass complaints per year. Using this information with the approximate time assigned from Chart 4 of 2.7 hours; the direct staff cost in processing a long grass complaint is approximately \$90 per file and over \$8,000.00 per year based on 92 files on average per year.

Where non-compliance with a by-law is determined and further action such as issuing an order is necessary, staff costs associated with processing an order is approximately 3 hours. This would essentially double the staff costs associated with a complaint at approximately \$115.00 to process an order.

Where court action is necessary, staff time increases by another 8.25 hours minimum due to travel to and from the court office in Owen Sound; prepare and issue summons, meeting with the Justice of the Peace, prepare Crown brief and then attend court (which in some instances could be the full day). Therefore, prosecuting a by-law under the Provincial Offences Act (POA) is very costly and time consuming and would increase the direct staff costs by \$315.00 minimum.

In summary,

Processing a by-law complaint: Staff Costs (Wages & Benefits):	\$105.00
Issuing an order:	\$115.00
Prosecution (POA):	\$315.00

Many municipalities charge administration fees to re-cover some of the enforcement costs. For instance, we currently do not charge a fee for a property standards complaint whereas many municipalities charge a fee for issuing an order as well as other administration fees to help offset the costs. It is recommended that all administrative fees be reviewed and establish a full recovery or to partially offset administration rates.

MEASURES TAKEN TO DATE TO IMPROVE EFFICIENCIES

2011

- Online Building & By-law Services were implemented in collaboration of our software vendor for City View. Members of our community can now go online and submit a complaint and view the status of their complaint from the comfort of their own home 24 hours/7 days a week. This also has the potential to eliminate extra trips to Town Hall; scheduling around typical municipal office hours between 8:20-4:30 and reduced staff time at the front service counter. Further, the information entered by the proponent online gets automatically updated in our City View database and thus reduces staff time entering and lodging complaints. Currently, 1 to 2 complaints per week are received online. Expanded communications and awareness could benefit higher usage.
- By-law Services Division initiated paperless files. All files are created electronically in the City View database – no paper folders, labels or emails printed. A scan of historic files indicated a high number had minimal paper – some even with only one sheet in the file.
- On average a minimum of 5 colour photos were printed for each file. Current costs are \$0.16 per colour copy. This does not include paper cost; toner replacement and other operating costs such as power consumption. On average there are approximately 500 files per year. Parking infraction notices issued averaged 2 photographs each. Photographs are now stored in a dedicated filing area on the corporate drive with no colour photos printed unless prosecution is required, then they are printed.

2010

- Initiated a friendly call notice where the MLEOs will call the proponent in violation of a by-law before sending off a letter. We have found that this has been successful in gaining compliance. Prior a letter would be sent upon determining a violation of a by-law – this would take many by surprise and we would receive very negative reaction to receiving this without prior warning. This has reduced the volume of letters produced and mailing costs.

- The Security Alarm Program was transferred into the City View database with automatic reminders, form letters and reports rather than the Access database that was utilized prior to this. Security alarm registrations are now processed similar to a building permit and future enhancements will allow online registrations of security alarms and payments, thus, reducing staff time processing cheques and inputting into City View.

2009

- The Building & By-law Department was re-structured into the Planning & Building Department. The Building & Bylaw Assistant became the Planning & Building Assistant who duties included the majority of correspondence and reports for By-law Services. This has left inadequate support for the Manager, Building & By-law Services and exposes risk to the Town.
- Standard form letters were created in City View for all typical by-laws enforced and now the MLEO's do all of their own correspondence – essentially taking ownership of the files from open to close out. This has reduced the time spent out in the field, however, this has also increased communication in the By-law Services Division and has made the process more accountable and efficient overall.

**Chart 7
By-law Services
Service Delivery Review: Initial Analysis**

Core Service or Program Element	Maintain or Improve Service Delivery WITHOUT increased cost			Alternative Methods to Deliver Services		
	Yes	No		Yes	No	
Animal Control		✓	Current Animal Control Officer enforces other municipal by-laws	✓		Contract out all animal control services: loss of control and increased risk to public health and safety due to potential longer increased times
Dogs at Large		✓	Significant time registering dog at dedicated pound and verifying licensing and ownership	✓		Increase Microchip awareness and usage could decrease time spent locating owners and confirming if dog is licensed: <i>publication and advertisement expense increase</i>
		✓	Significant time registering dog at dedicated pound and verifying licensing and ownership	✓		Implement a "free ride home" policy similar to other municipalities where dog is micro chipped rather

						than taken directly to pound.
Dog Bites		✓	Investigating dog bites and DOLA is very detailed and time consuming	✓		Investigation by OPP rather than By-law Enforcement
		✓	Responsible dog ownership is hard to control and unpredictable		✓	Increase public awareness may reduce dog bite incidents: publications and advertisement expense increase
Dog Licensing	✓		Current Application forms are circulated with Tax Notices	✓		Online Registrations and Payments; mail out dog tag: increase dog licensing and revenue
Rabies Control		✓	Animal Control Officer currently assists internal department and OPP with removal	✓		Third party animal removal
Parking Control	✓			✓		Expand the appointment of private MLEOs
Court Appearances	✓		Proponents wishing to dispute in court: MLEO required to attend in Owen Sound	✓		Initiate a first attendance program at Town Hall or at the Village in winter months: reduce staff time and resources attending court
Parking within BMR	✓		Increased parking issues as visitors increase	✓		Expand MLEOs to the entire BMR area
Core Service or Program Element	Maintain or Improve Service Delivery WITHOUT increased cost			Alternative Methods to Deliver Services		
	Yes	No		Yes	No	
By-law Enforcement	✓			✓		Review and update all by-laws
Abandoned Orchards		✓	Municipal Weed Control Inspector enforces other municipal by-laws		✓	Discretionary
Building Code Act		✓	Enforcement is mandated by the Building Code Act		✓	Required by Legislation
Civic Addressing		✓	Enforcement blitz in 2007; very few complaints or proactive enforcement since	✓		Education and enforcement through Fires Services Department would be more in line with their services
Deposit Ice and Snow on Municipal Roads		✓		✓		Education and enforcement through Engineering & Public Works Department would be more in line with their core services. By-law Enforcement would only be involved if charges under POA

Disabled Person Parking (Note: Title of By-law should be changed to Accessible Parking)		✓	Town owned parking lot is not properly signed and hard to enforce other non-compliant instances	✓		Expand the appointment of private parking MLEO program to other areas or the BMR Village and Town wide
						Hire summer students to enforce parking
Fence		✓			✓	
Fill/Grading		✓	Very time consuming with majority of grading issues deemed a civil matter between property owners	✓		Follow up and enforcement through Engineering & Public Works Department would be more in line with their core services. By-law Enforcement would only be involved if charges under POA
Fire Routes	✓		Majority of instances at the BMR Village	✓		Appointment of Fire Prevention Officers to ticket and/or tow
Littering		✓				
Long Grass/Noxious Weeds		✓	Enforcement very time consuming and costly	✓		Co-ordinate with other departments and increase height from 10" to 12" in the by-law
Noise		✓	Mainly administered by OPP with follow up by MLEO. Enforcement is very time consuming		✓	
Parking		✓	Seasonal with high volume during winter months	✓		Expand the appointment of private parking MLEO program to other areas or the BMR Village and Town wide
Property Standards		✓	Currently only exterior and area specific		✓	
Public Nuisance		✓				
Short Term Accommodation		✓	Recent OMB Hearing Successful			Program to be determined
Signs		✓	Complaint basis semi-annual patrol and removal if illegal signs (health & safety risk)	✓		Contract out sign removal
Site Plan Agreement		✓	Very few instances		✓	Generally administered through Engineering & Public Works
Snowmobile (12th Line)		✓	By-law rescinded by Council in 2010			
Swimming Pool Fence		✓			✓	
Tree Preservation		✓			✓	
Waste Collection		✓			✓	
Watering		✓			✓	

Zoning		✓		✓	Comprehensive Zoning By-law Project
Security Alarm Registrations	✓		Administer under Building Permit Program - Similar to Building Permits	✓	Online Registrations and Payments

SUMMARY

Section 224 of the Municipal Act, 2001 sets out the role of council. Many of the broad areas of responsibility prescribed in this provision, particularly the responsibility to set policy and deliver services, affect the review process and must be considered in establishing a review framework. Council roles here are:

- a) to represent the public and to consider the well-being and interests of the municipality;*
- b) to develop and evaluate the policies and programs of the municipality;*
- c) to determine which services the municipality provides;*
- d) to ensure that administrative practices and procedures are in place to implement the decisions of council;*
- e) to maintain the financial integrity of the municipality; and*
- f) to carry out the duties of council under this or any other Act.”*

In reference to the MMAH Guide to Service Review: *“Council has a critical role to play in reviewing services. This role needs to be communicated to council, staff and citizens early in any review process.”*

In conducting a review of service delivery; many factors in addition to budget considerations should be taken into account to fully including community needs, expectations and health and safety of the general public. Further, to emphasize, the overall *“value for service delivery review”* process is not a budget, an audit, an organizational review, nor is it an assessment of individuals, skills or competencies.

Phase One of this review focused primarily on the development of a diagnostic or information gathering that identifies key areas, services, and business process that might benefit from a more detailed analysis which could be accomplished in an expanded service review. Once a full review is completed both qualitatively and quantitatively, measures can be monitored for the performance of By-law Services based on systematic observations relative to peer benchmark municipalities.

However, it is recommended a uniform approach for a full service delivery review be implemented for all departments and core services as outlined in the MMAH Guide to Service Review. Public input through customer satisfaction surveys, public meetings or town hall sessions is strongly recommended. The MMAH Guide to Service Review further recommends establishing a committee comprising of various community stakeholders for such a task.

C. The Blue Mountains’ Strategic Plan

Providing a strong, well managed municipal government

D. Environmental Impacts

N/A

E. Financial Impact

N/A

F. Attached

1. Chart 5: "By-law Services: Expenses and Revenues 2006-2011"
2. Chart 6: "Estimated Complaint File Processing Times"
3. Draft Service Standard
4. Brownlee Fryett Municipal Law Newsletter, March 2003

Respectfully submitted,

Greg Miller, C.E.T.
Manager, Building & By-law Services
Office: 519-599-3131 ext. 261
gmler@thebluemountains.ca

David Finbow
Director, Planning & Building Department
Office: 519-599-3131 Ext.246
dfinbow@thebluemountains.ca

**Chart 5
By-law Services
Expenses & Revenues
2006-2011**

By-law Services	2006	2006	2007	2007	2008	2008	2009	2009	2010	2010	2011*	2011 YTD June 2011	Average 2006-2010	5 Year Total 2006-2010
	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual		
	Dollar (\$)													
Total Salary & Benefits	98,752.00	105,216.70	146,095.00	144,490.19	210,950.00	196,612.15	192,608.00	190,116.54	177,271.00	161,587.61	183,760.00	49,499.51	159,604.64	798,023.19
		65%		77%		82%		78%		75%		66%	75%	
Total Expenses	141,142.00	162,060.69	197,970.00	186,980.47	257,215.00	239,146.08	241,270.00	244,279.40	223,838.00	215,830.44	232,735.00	75,288.82	233,085.31	1,048,297.08
Total Transfers	43,350.00	28,164.88	18,424.00	17,271.29	18,439.78	11,517.20	20,392.99	7,465.00	24,607.00	20,991.68	11,686.00	-	17,082.01	85,410.05
Total Expenses & Transfers	184,492.00	190,225.57	216,394.00	204,251.76	275,654.78	250,663.28	261,662.99	251,744.40	248,445.00	236,822.12	244,421.00	75,288.82	226,741.43	1,133,707.13
Total Revenue	40,500.00	38,850.02	56,625.00	49,706.73	54,500.00	32,810.98	45,300.00	42,093.52	46,300.00	47,747.77	50,400.00	44,270.25	40,884.09	211,209.02
Net Position	143,992.00	151,375.55	159,769.00	154,545.03	221,154.78	217,852.30	216,362.99	209,650.88	202,145.00	189,074.35	194,021.00	31,018.57	184,499.62	53,516.68
Expense to Revenue	4.6	4.9	3.8	4.1	5.1	7.6	5.8	6.0	5.4	5.0	4.8	1.7	5.5	5.4
Expenditure per 1,000 Population		27,871.88		29,927.00		36,727.22		36,885.63		34,699.21		11,031.33	33,222.19	

Chart 6

Estimated Complaint File Processing Times

	Activity	Animal Control				Property Standards			Noise	Zoning	Illegal Signs	Misc.
		Dog at Large	Dog Bite/DOLA	Noise	Licence	Long Grass	Noxious Weeds	Property				
By-law Clerk	Receive Complaint	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
	Input into City View	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
	Correspondence/Filing/Scanning	10.00	10.00	15.00	15.00	15.00	15.00	10.00	15.00	10.00	15.00	15.00
	Clerk Sub Total (min.)	25.00	25.00	20.00	20.00	20.00	20.00	25.00	20.00	25.00	20.00	20.00
	Clerk Sub Total (hr.)	0.42	0.42	0.33	0.33	0.33	0.33	0.42	0.33	0.42	0.33	0.33
		\$ 7.69	\$ 7.69	\$ 6.15	\$ 6.15	\$ 6.15	\$ 6.15	\$ 7.69	\$ 6.15	\$ 7.69	\$ 6.15	\$ 6.15
MLEO	Review Complaint File	15.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
	Initial Correspondence, Telephone, Scan	30.00	30.00	30.00	30.00	20.00	30.00	30.00	10.00	30.00	20.00	10.00
	Initial Site Visit & Investigation	30.00	30.00	30.00	5.00	10.00	30.00	30.00	30.00	30.00	30.00	30.00
	Input Comments/Notes into City View	30.00	30.00	15.00	5.00	5.00	30.00	30.00	15.00	30.00	15.00	15.00
	Scan & Attach Photos	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
	Notification to Offender (Letter, mail)	10.00	15.00	10.00	0.00	10.00	15.00	15.00	10.00	15.00	0.00	10.00
	Re-Inspection & Investigation	15.00	15.00	10.00	0.00	20.00	15.00	15.00	10.00	15.00	0.00	10.00
	Input Comments/Notes into City View	5.00	15.00	5.00	5.00	10.00	15.00	15.00	10.00	15.00	10.00	10.00
	Compliance Letter/Notification	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
	Close File - File Management	10.00	10.00	10.00	5.00	5.00	5.00	5.00	5.00	5.00	10.00	5.00
	Misc.	20.00										
	Prosecution/POA*	180.00	180.00	180.00		30.00	30.00	320.00	320.00	320.00	180.00	180.00
	Travel Time (Avg.)	45.0	30.0	30.0	0.00	45.00	45.00	30.00	30.00	30.00	30.00	30.00
	MLEO Sub Total (min.)	220.00	190.00	155.00	65.00	140.00	200.00	185.00	135.00	185.00	130.00	135.00
	MLEO Sub Total (hr)	3.67	3.17	2.58	1.08	2.33	3.33	3.08	2.25	3.08	2.17	2.25
		\$ 140.07	\$ 120.97	\$ 98.68	\$ 41.38	\$ 89.13	\$ 127.33	\$ 117.78	\$ 85.95	\$ 117.78	\$ 82.77	\$ 85.95
	TOTAL (min.)	245.00	215.00	175.00	85.00	160.00	220.00	210.00	155.00	210.00	150.00	155.00
TOTAL (hr.)	4.1	3.6	2.9	1.4	2.7	3.7	3.5	2.6	3.5	2.5	2.6	
TOTAL												
		\$147.75	\$128.65	\$104.83	\$47.53	\$95.28	\$133.48	\$125.47	\$92.10	\$125.47	\$88.92	\$92.10



CUSTOMER SERVICE POLICY

3.

The Building & By-law Division is committed to creating a positive experience for our customers and our fellow staff at Town Hall. **Our customers will be our priority.** We are committed to the following:

Approach: We will treat our customers with empathy, respect, courtesy, patience, fairness and in a professional way. We will listen, ask questions to clarify the situation and take notes. We will be solution-focused. We will not engage in any confrontational, argumentative, physical, abusive, profane or other tactics whether confronted or not. We will not lose our cool. Where necessary we will arrange to undertake an inspection or conduct business at another time that is convenient to the customer. We will consult with fellow staff on options for resolving difficult relations. We will not jump to conclusions, apportion blame or become defensive.

Knowledge: We will use our technical knowledge with the objective of assisting the customer to understanding the intent and purposes of the prescriptive standard, to understand the legal obligations for compliance and to resolve a construction issue. Where we do not know a prescriptive standard or are unsure of how a standard might apply or are unable to answer a question, we will offer to provide an answer following consultation with fellow staff or through research and we will do so in a timely fashion. Where the prescriptive standard does not apply or there is a need for an interpretation, we will confer with fellow staff before providing a response. (Note: the requirement for an engineer's report should be the exception to the rule.)

Problem Solving: We will respond to a problem or complaint quickly and will tell the customer how it will be handled and tell them when they can expect a response. We will not make promises we cannot fulfill

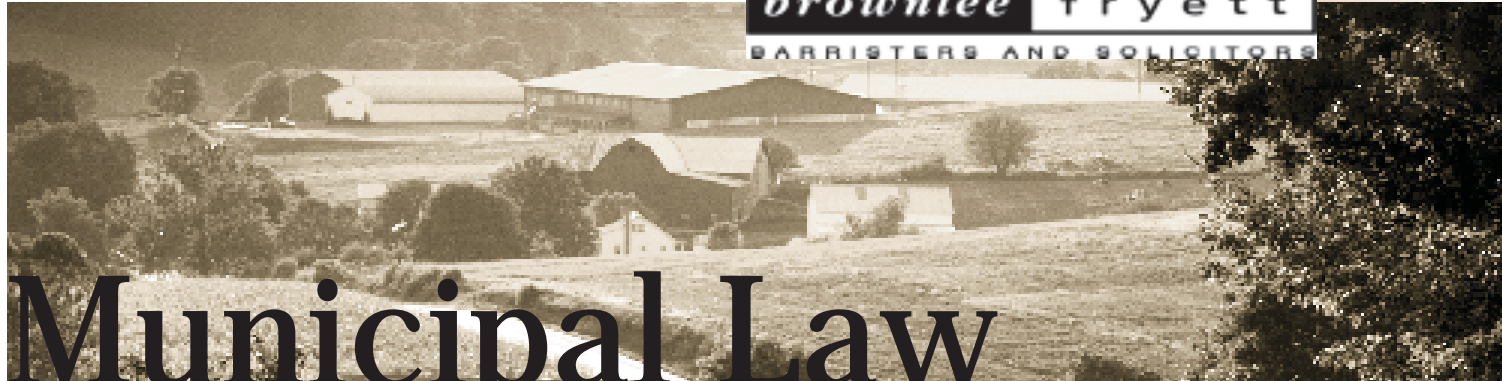
Inquiries: We will respond to telephone inquiries within 1 business day and to written inquiries within three business days.

Follow-up: We will regularly evaluate how we have dealt with our customers by asking them whether we have resolved their problem and whether we can improve our service.

Team approach: We will operate as a team and will coordinate our efforts to providing a consistent, comprehensive and solution-focused approach to customer service.

Building Permit Awareness: We will keep the public informed of the benefits of the Building Inspection Service through programs such as Building Awareness Week and sharing new information and technologies with the public and the Building Industry.

Staff training: new staff will be required to undertake customer relations training. Existing staff will be evaluated on their customer relations skills as part of their annual performance review and will be required to take additional training where required.



Municipal Law

A Brownlee Fryett Municipal Law Team Quarterly Newsletter

Should We or Shouldn't We?

Enforcing Municipal Bylaws

Bylaw enforcement generally refers to the action taken by those in a position of authority against people who disobey bylaws. Common enforcement methods include, but are not limited to: fines, tickets, warnings, administrative orders and court action. The following article discusses the law in relation to bylaw enforcement and some common issues surrounding this matter.

The Law Regarding Liability For Failure To Enforce

In the 1984 *Kamloops v. Neilsen* case, the Supreme Court of Canada adopted a test for municipal liability for non-enforcement that was set out in an earlier English decision. *Kamloops* has been reaffirmed by the Supreme Court many times, as recently as 2000, which indicates that the principles set out in the case are still good law. The two parts of the *Kamloops* test are as follows:

1. Is there a sufficiently close relationship between the municipality and the claimant so that, in the reasonable contemplation of the municipality, carelessness on its part might cause damage to the claimant?
2. Are there any considerations which ought to negative or limit: (a) the scope of the duty and, (b) the class of persons

to whom it is owed or, (c) those damages to which a breach of it may give rise.

One consideration which would negative or limit the liability of a municipality is a statutory exemption clause. Part 13 of the *Municipal Government Act* (MGA) addresses the enforcement of municipal law. Essentially, the MGA allows a municipality to enforce its own bylaws, creating a discretionary right, not an imperative obligation. This authority set out in the MGA allows a municipal council the option of non-enforcement if the council so chooses.

As a general rule, *bona fide* decisions of a municipal council to not enforce bylaws are to be respected by the courts and should not give rise to liability. However, the decisions of council must be made in good faith, and in consideration of legitimate policy concerns. An example of a legitimate policy consideration that has been recognized by the courts is that of financial forecasting. The cost of enforcement officers can be very high, as is the cost of litigation, and enforcement may not be a priority when weighed against other municipal purposes, particularly in times of financial hardship. Another example of when a municipality might choose not to enforce a particular bylaw is when that bylaw is out-dated. The issue the bylaw originally addressed may no longer be a problem and the council may not have had the opportunity to

In this Issue:

Should We or Shouldn't We? Enforcing Municipal Bylaws

Looking at the Risk Municipal Liability for Inspections

● Our Team



A municipal council must weigh the benefits of non-enforcement (i.e. saving money), with the potential dangers

AAMD&C Annual Spring Convention

Brownlee Fryett is proud to be a sponsor of the AAMD&C Annual Spring Convention!

Join us for some "Northern Exposure" at our Hospitality Suite on Monday, March 31st
Crystal Gallery (Main Floor)
Delta Edmonton South Hotel
4:30 PM - Midnight

Farewell to Larry Goodhope

The Partners, Associates and Staff of Brownlee Fryett would like to congratulate Mr. Larry Goodhope on his retirement as Executive Director with the AAMD&C. We would like to express our thanks to Mr. Goodhope for his continued support & friendship over the years and we wish him all the best.

re-visit the reasons why the bylaw was passed in the first place.

One qualification to the protection afforded by courts to discretionary non-enforcement arises in situations involving the public's health and safety. In such cases, the courts are more inclined to review very critically a decision not to enforce, and to be reluctant to find such a decision was made *bona fide* and in good faith. Equally, in such cases, the court will be more likely to find a positive duty of care on the municipality to actively enforce its bylaws.

Discretionary or Mandatory Enforcement

There are times when a municipal council deprives the municipality of

a defense based on discretionary enforcement by its use of mandatory language in the bylaw itself. If the word "shall" or the word "must" is used in relation to enforcement within the bylaw, the courts are likely to find that at least a reasonable level of enforcement is mandatory. In this situation, a municipality will likely be held liable for any damages arising from the failure to enforce that bylaw.

On the other hand, if the term "may" is used in the bylaw in relation to enforcement, it indicates that the municipal council has the discretion to enforce the bylaw or not. In the situation where a council makes a *bona fide* policy decision to not enforce a bylaw, it should not be found liable for non-enforcement. As section 529 of the MGA states, "A municipality that has the discretion to do something is not liable for deciding not to do that thing in good faith or for not doing that thing." However, a decision not to enforce may lead to other problems, quite distinct from considerations of increased risk of liability.

Impacts of Non-Enforcement

If some bylaws are not enforced in a community, the community may experience a variety of negative reactions. One problem a municipality may experience is an increase in complaints from ratepayers about either the non-compliance of neighbours, or the lack of enforcement by the municipality. People in the community may get frustrated by a sense that they abide by the bylaws, but that their neighbours do not. A general lack of respect for bylaws may arise, and people may openly disobey the bylaws as they are aware that the bylaws won't be enforced. If certain bylaws are enforced and others are not, people prosecuted for contravening a bylaw may feel "singled out" or unfairly picked on.

A municipal council must weigh the benefits of non-enforcement (i.e. saving money),

with the potential dangers as described above. In many cases, financial concerns override the municipal council's concern over open non-compliance. Fortunately, if a municipal council chooses to adopt a policy of non-enforcement, it can change this decision at any time. If the financial situation of a municipality improves, or non-compliance becomes a problem, the municipal council has the right to enforce the bylaws at any time.

Conclusion

The current state of the law in Canada as set out in the *Kamloops* case and followed since, provides that a municipal council generally has the discretion whether or not to enforce its own bylaws unless the bylaw or a governing statute specifically states otherwise. In order to rely on a good faith discretionary decision to not enforce, the members of a municipal council must demonstrably have put their minds to the issue. Council must take into consideration the possible ramifications of non-enforcement, and weigh these against any benefits such as cost savings. If a municipal council decides that a particular bylaw does not need to be enforced, it may be prudent to consider repealing that bylaw to avoid any additional problems associated with non-enforcement. Finally, municipalities should be aware that when the health and safety of the public are concerned, it will be much more difficult for the municipal council to establish that its decisions were made *bona fide* and in good faith and therefore, immune from liability. ●

The above article was prepared by Crystal Dabski, Student-at-Law, of the Edmonton Office of Brownlee Fryett. If you have any questions regarding this article, please do not hesitate to contact any one of the Municipal Lawyers at Brownlee Fryett by calling toll free at 1-800-661-9069 or by email at e-mail@brownleelaw.com.

Emerging Trends In Municipal Law March 4 & 13

*The Latest Issues
Impacting
Municipalities*

CALGARY SEMINAR
Tuesday, March 4, 2003
The Sheraton Cavalier
2620 - 32nd Avenue N.E.
Calgary, Alberta

EDMONTON SEMINAR
Thursday, March 13, 2003
The Coast Terrace Inn
4440 Gateway Blvd.
Edmonton, Alberta

Don't forget to register!
Call (780) 497-4800



Lawyer Profile:

Suzanne Hathaway-Rae is an Associate with the Brownlee Fryett Calgary Office

Suzanne received her B.A. in Political Science in 1992 and her M.C.S. in 1997 both from the University of Calgary. She obtained her Bachelor of Laws in 2001, articulated with Brownlee Fryett and was called to the Alberta Bar in 2002. Her preferred areas of practice are Municipal Government Law, Land Use Planning, Development & Zoning Matters, Taxation & Assessment Matters, Administrative Law, and Corporate Law.

continued next page ...

Looking at the Risk Municipal Liability for Inspections

Municipal liability for inspections is an evolving area of the law. This is particularly true in Alberta, where we have relatively new legislative provisions in the *Safety Codes Act* regarding liability, the limits of which have not yet been tested to any great degree. While the following comments are primarily directed at municipal inspections in the context of building, they are equally applicable to other situations in which municipalities undertake or adopt systems of inspection.

Standard of Care: Operational Decisions and Activities

The Supreme Court of Canada has stated that a municipality can only be held liable for those defects which the municipal inspector could reasonably be expected to have detected and had the power to have remedied. The Supreme Court has also stated that municipalities will not be held to a standard which makes them insurers for the work, nor will they be expected to discover every latent defect.

Therefore, in order to avoid liability the municipality must show that it exercised the standard of care that would be expected of an ordinary reasonable prudent inspector in the same circumstances. What constitutes a reasonable inspection will vary depending on the facts of each case. Factors which may be relevant in determining the standard of care include the likelihood of a known or foreseeable harm, the gravity of that harm and the burden or cost which would be incurred to prevent the injury. For example, if an inspector has reason to believe that a contractor may be inclined to contravene the instructions in a building permit or if the inspector becomes aware of deficiencies or defects, a higher standard of care may be triggered. It is not enough to rely on representations of owners or contractors to the effect that certain work has been done or that work has been done to the applicable standards.

It is also worth noting that negligence on the part of an owner, builder and/or contractor will not necessarily absolve the municipality from liability. In fact, the Supreme Court has stated that in order to

avoid liability on this ground, a municipality must show that the owner/builder's conduct amounted to a flouting of the inspection scheme, which conduct extended far beyond mere negligence. In essence the municipality would have to demonstrate that the owner/builder engaged in conduct making it impossible for the inspector to do anything to avoid the danger such that the owner/builder's conduct was the sole source of the loss.

Statutory Protection from Liability

As noted above, legislation is another factor that may serve to reduce or eliminate the duty of care, the scope of the duty or the amount of damages payable. In Alberta, legislation dealing with municipal liability for inspections has been drafted to try to minimize the potential exposure. For example, Section 530 of the *Municipal Government Act*, R.S.A. 2000, c. M-26, states in part that a municipality is not liable for damage caused by a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections.

As well, the wording of Section 12 of Alberta's *Safety Codes Act*, R.S.A. 2000 c. S-1 would seem to provide municipalities and inspectors with a wide scope of immunity from liability. Unfortunately, there is little judicial interpretation of Section 12 of the *Safety Codes Act* to date. In *Wild Rose School Division No. 66 v. Bert Pratch Construction Co.*, the Alberta Court of Queen's Bench dismissed a motion by the Crown (the building inspection authority) to strike out a pleading as disclosing no reasonable cause of action. In this case, the owner sued the builder/contractor for negligence in the construction of a building renovation project resulting in the building being destroyed by fire. The builder/contractor in turn alleged that officials of the Crown were negligent and in breach of their statutory duty by failing to enforce appropriate building and fire codes for a number of years. In dismissing the application to strike the claim against the Crown, Justice Sanderman decided that the inspection authority had not proven that the exemption clause applied, particularly in light of the allegations of recklessness and

continued...

bad faith advanced against the building authority in the pleadings. It must also be remembered that this was an application to strike pleadings and therefore the applicant had to meet the very high onus to show that there was no reasonably arguable case to meet.

To date there has not been sufficient judicial consideration of the scope and efficacy of the exemption provisions to be confident that they will necessarily serve to shield a municipality from liability where there has been negligence in carrying out the inspections. It appears likely from the wording of the section that the protection will not apply where there is a finding of bad faith.

Conclusion

Whenever a municipality accepts new responsibilities, there is an associated increased risk of liability. Perhaps nowhere is this more apparent than in the context of inspections. Therefore, where a municipality has discretion whether to adopt a system of inspection (or in the case of the *Safety Codes Act*, a decision whether to become accredited), it should carefully evaluate whether it will have the resources to carry out the level of inspection necessary to fulfill its obligations. If a policy decision to inspect is made, municipalities should establish additional policies that realistically reflect the resources and expertise of the municipality in terms of its ability to carry out the inspections. Finally, the municipality should monitor the system of inspections to ensure the inspections are being carried out in accordance with the established policies. ●

The above article was prepared by Suzanne Hathaway-Rae, an Associate at our Calgary Office. If you have any questions regarding this article, please do not hesitate to contact Suzanne or any one of our other Municipal Lawyers listed opposite.

Calgary

Suite 2000 Watermark Tower
530 – 8th Avenue SW
Calgary, AB T2P 3S8
fax 403.232.8408
phone 403.232.8300

Our Team:

Brownlee Fryett has been providing legal services to municipalities for over 60 years. In addition to the lawyers practicing in our Municipal Department, there are a number of lawyers in the Litigation Department whose practices include Municipal Litigation.

For more information regarding the articles in this Bulletin, or on other municipal law issues, please feel free to contact the following members of the Municipal Team at our toll-free line (1-800-661-9069) or their direct lines listed below.

Edmonton Office

Raymond C. Purdy, Q.C.	780-497-4879	rpurdy@brownleelaw.com
Barry A. Sjolie	780-497-4818	bsjolie@brownleelaw.com
Kevin W. Fedorak	780-497-4857	kfedorak@brownleelaw.com
Ronald R. Nelson	780-497-4851	rnelson@brownleelaw.com
Thomas D. Marriott	780-497-4868	tmarriott@brownleelaw.com
Raymond G. Miki	780-497-4821	gmiki@brownleelaw.com
Dan J. Jenkins	780-497-4863	djenkins@brownleelaw.com
Jeneane S. Grundberg	780-497-4812	jgrundberg@brownleelaw.com
Carol M. Zukowski	780-497-4815	czukowski@brownleelaw.com
Suzanne N. Polkosnik	780-497-4889	spolkosnik@brownleelaw.com
Colin R. Fetter	780-497-4867	cfetter@brownleelaw.com
Rodd C. Thorkelsson	780-497-4843	rthorkelsson@brownleelaw.com
Shannon L. Wyatt	780-497-4861	swyatt@brownleelaw.com
M. Grace Garcia Cooke	780-497-4809	gcooke@brownleelaw.com
Ryan R. Ewasiuk	780-497-4850	rewasiuk@brownleelaw.com
Derek J. King	780-497-4846	dking@brownleelaw.com
Leah M. Fitzgerald	780-497-4836	lfitzgerald@brownleelaw.com

Calgary Office

Glen B. Scott	403-260-5302	gscott@brownleelaw.com
David M. Pick	403-260-5305	dpick@brownleelaw.com
Tim W. Bardsley	403-260-5313	tbardsley@brownleelaw.com
Joanne M. Klauer	403-260-5303	jklauer@brownleelaw.com
Suzanne Hathaway-Rae	403-260-1468	shathaway@brownleelaw.com

The contents of this publication are intended to provide general information. Readers should not rely on the contents herein to the exclusion of independent advice as each case is unique and will depend on the particular circumstances.

Edmonton

Suite 2200 Commerce Place
10155 – 102 Street NW
Edmonton, AB T5J 4G8
fax 780.424.3254
phone 780.497.4800
toll free 1.800.661.9069