

DECISION/DIRECTION NOTE

Title: Municipal Diversion Initiative

Date Prepared: August 26, 2021

Report To: Regular Meeting of Council

Councillor and Role: Councillor Ian Froude, Transportation and Regulatory Services & Sustainability

Ward: N/A

Decision/Direction Required:

To approve the proposed Municipal Diversion Initiative that would make use of alternative mechanisms of resolution outside of prosecution.

Discussion – Background and Current Status:

When someone fails to comply with City By-Laws and legislation, one of the enforcement tools available is laying charges at Provincial Court. These charges are then prosecuted by the City's Municipal Prosecutor. The goal of any regulatory prosecution is compliance and deterrence, which is typically achieved through court orders and fines. Municipal Diversion is an alternative to prosecution, seeking those same goals of compliance and deterrence but without resorting to the traditional court process.

The proposed Municipal Diversion Initiative would be a post-charge compliance program that enables someone charged with a municipal offence the opportunity to avoid prosecution by completing certain requirements. The exact terms of each program vary, depending on the nature and complexity of the case; however, the ultimate goal is compliance.

Successful completion of Municipal Diversion leads to the charges being withdrawn, with no fines or court orders issued. Failure to satisfy the terms of the compliance program results in the matter proceeding to prosecution. There is no penalty for not participating in Municipal Diversion, or for failing to complete a compliance program.

The alternative resolution mechanisms utilized in Municipal Diversion are not completely foreign to the City. Diversion is practiced informally already through the exercise of prosecutorial discretion. The City's Municipal Diversion Initiative would formalize and strengthen existing practices, creating clearer parameters and objectives.

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Municipal Diversion's unique combination of legal direction, enforcement support, individual involvement, and judicial oversight provides the highest likelihood of achieving compliance objectives and reducing recidivism.

Eligibility

Not all offences/offenders are eligible for Municipal Diversion. The Prosecutor must consider whether a matter would be a good candidate for Diversion, or whether it would be contrary to the public interest. Additionally, to be eligible for Diversion the person charged must acknowledge responsibility and commit to working with the City to come to a resolution of the charges.

Administration

The Legal Department would be responsible for the administration of Municipal Diversion, consulting with Inspection Services staff where necessary. As Municipal Diversion is a formalizing of prosecutorial discretion, the Municipal Prosecutor would retain independence and discretion throughout the process, acting always with the public interest in mind.

Because Municipal Diversion is based on theories of responsive regulation and restorative justice, administration of the program will involve working with the individual to educate and build relationships. Clarifying the City's requirements, and rationale behind the requirements, helps promote a better understanding of why the person was charged. This knowledge can empower the individual to achieve compliance objectives. Engaging in meaningful dialogue with the individual can also help build trust, repair any communication breakdowns, and emphasize mutual respect, all of which help gain compliance and reduce the likelihood of re-offending.

Start Date & Evaluation

The proposed Municipal Diversion Initiative would begin September 2021. Quarterly meetings with senior staff of Inspection Services and the Legal Department will be held to evaluate the success of the Initiative and discuss any concerns. The number of meetings may increase/decrease depending on the volume of matters processed. The Legal Department will report to Council in 1 year to determine whether the Municipal Diversion Initiative should continue, change, or be terminated.

Key Considerations/Implications:

1. Budget/Financial Implications:

- Successful completion of a Municipal Diversion compliance program would mean the charges would be withdrawn and no fines could be issued.

- There would be a financial impact for those matters that would have resulted in a fine but were diverted. However, the amount would be small and the time and resource cost of not proceeding to trial would likely outweigh any fines issued.
2. Partners or Other Stakeholders:
 - Regulatory Services – Inspection Services
 - General Public
 - Provincial Court
 3. Alignment with Strategic Directions/Adopted Plans:
 - Effective City – improve organization performance through effective processes and policies – Municipal Diversion offers a more efficient and effective means of resolution than the traditional Court process.
 - Connected City – increase and improve opportunities for residents to connect with each other and the City – Municipal Diversion removes punitive sanctions and instead focuses on education and relationship building between the individual and the City.
 4. Legal or Policy Implications:
 - The Legal Department will be responsible for administering Municipal Diversion. If interested, the individual will fill out a Municipal Diversion Application form. The Prosecutor will review the form and file and determine eligibility. If eligible, the Prosecutor will coordinate with the individual and Inspection Services to determine the terms of the compliance program.
 - Once parties agree to the terms, a Municipal Diversion Agreement will be signed by the Prosecutor and the individual. Upon successful completion of the terms, the charges will be withdrawn.
 - If the individual does not successfully complete the program, or decides to discontinue the program, the prosecution will proceed. Information provided by the individual during the program will not be used against them in the prosecution. Alternative legal counsel (i.e. another member of the Legal Department not affiliated with the matter) may be used to prosecute depending on the circumstances and any potential conflict/concerns.
 5. Privacy Implications:
 - An ongoing Municipal Diversion compliance program relates to a prosecution that has not been completed and would not be captured under ATIPPA, 2015. It therefore does not require a Privacy Impact Assessment. However, strict confidentiality must always be maintained to protect the integrity of the program and prevent any potential interference
 - Once completed (i.e. charges withdrawn or prosecution completed), the information from the Diversion program would be protected from disclosure (like any other prosecution file) under section 31 and 40 of ATIPPA, 2015.
 6. Engagement and Communications Considerations:

- The Legal Department has worked with Communications to finalize a Municipal Diversion Information Sheet that will accompany the Application Form.
 - The Municipal Diversion Application Form will be available on the City website.
7. Human Resource Implications:
- N/A
8. Procurement Implications:
- N/A
9. Information Technology Implications:
- The Municipal Diversion Application Form will need to be uploaded to the City website
10. Other Implications:

Recommendation:

That Council approve the proposed Municipal Diversion Initiative that would make use of alternative mechanism of resolution outside of prosecution.

Prepared by:

Approved by:

Report Approval Details

Document Title:	CSJ Municipal Diversion Initiative.docx
Attachments:	- Municipal Diversion Agreement Form with Info Sheet.pdf
Final Approval Date:	Sep 2, 2021

This report and all of its attachments were approved and signed as outlined below:

Cheryl Mullett - Sep 2, 2021 - 8:44 AM