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Report 2025-124

Report Title: County Application for Judicial Review, 310 Division Street

Committee Name: Corporate Support

Committee Meeting Date: June 3, 2025

Prepared by: Darrell Mast
Municipal Solicitor
Legal Services

Reviewed by: Jennifer Moore
Chief Administrative Officer

Approved by: Jennifer Moore, CAO

Council Meeting Date: June 18, 2025

Strategic Plan Priorities: ☐ Innovate for Service Excellence
☐ Ignite Economic Opportunity
☐ Foster a Thriving Community
☐ Propel Sustainable Growth
☒ Champion a Vibrant Future

Information Report

“That the Corporate Support Committee receive Report 2025-124 ‘County Application for Judicial Review, 310 Division Street’ for information; and

Further That the Committee recommend that County Council receive the report for information.”

Purpose

The purpose of this report is to update Committee and Council on steps taken by the County to make an application to the Divisional Court for Judicial Review of an order and administrative penalty notice issued by the Town of Cobourg under its By-law 018-2024 (Emergency Care Establishment Licensing By-law) with respect to the County’s emergency sheltering hub located at 310 Division Street, Cobourg.

Background

The County owns the property at 310 Division Street, Cobourg, which has operated as an emergency shelter hub since the fall of 2024. The County and the shelter operator, Transition House, have both obtained licenses from the Town of Cobourg under By-law 018-2024, the Emergency Care Establishment Licensing By-law (“ECE By-law”), for this purpose. Further background information on the 310 Division Street Shelter and the ECE By-law may be found in previous reports to Council.

On April 10, 2025 the County was issued an order and penalty notice under the ECE By-law, following an inspection by the Town’s By-law Officer on April 3, 2025 at approximately 3:00 a.m. The order alleges the County failed to ensure compliance with the approved fire safety plan for 310 Division Street, which the County is required to implement pursuant to the *Fire Code*, being O.Reg. 213/07 under the *Fire Prevention and Protection Act, 1997*, SO 1997, c. 4 (the “*FPPA*”).

Although the ECE By-law order requires the County to ensure compliance with the *FPPA*, the *FPPA* has its own enforcement process under the jurisdiction of the Fire Chief. The *FPPA* process has different rules related to inspections, the qualifications of inspectors, and includes a process whereby property owners may request an expert review of any order issued by the fire chief by the office of the fire marshal, and a further appeal to the Fire Safety Commission, which is a tribunal established for that purpose. The County has never been issued any order or otherwise found out of compliance with the *FPPA* or the *Fire Code* through this process.

Since the order was issued under the ECE By-law, there is no specific mechanism for review or appeal available. Staff have confirmed with both the Office of the Fire Marshal and with the Town itself that there is no opportunity to review the order through their processes. The penalty notice is subject to a screening process and a potential further appeal to a hearings officer under the Town’s By-law 079-2022, which the County has pursued. A screening hearing was held on May 21, 2025 and the screening officer issued a decision denying the request for screening.

Consultations

N/A

Legislative Authority / Risk Considerations

Under the *Judicial Review Procedure Act*, RSO 1990, c. J.1, an application may be made to the Superior Court of Justice (Divisional Court) to review a statutory decision and grant certain relief from those decisions. It was concluded that this was the only process available to request a review of the order issued under the ECE By-law. It should be noted that this is not a challenge of the ECE by-law itself, and the County is not seeking any damages from the Town.

An application for judicial review must be made within 30 days of the decision to be reviewed. It was therefore necessary to have a notice of application with respect to the order and penalty notice issued on April 10, 2025 issued by the Court no later than Monday May 12, 2025.

Discussion / Options

In its application, the County has raised several issues with respect to the order, including the contents of the order, whether it could be properly issued under the ECE by-law, and whether it is appropriate to issue this order under the ECE by-law despite that the more robust process under the *FPPA* has never been engaged to determine the non-compliance alleged in the order.

The County is aware that the ECE by-law is the first of its kind and represents a novel type of municipal licensing regime. The Judicial Review process has the potential to provide additional clarity on how this type of by-law should work. From the County's perspective, it is important that issues with respect to the order be resolved so that it can understand its compliance obligations, avoid further penalties, and ensure that there is no suspension or revocation of its current license, or refusal to extend its license in the future, on the basis of the order.

The County is committed to continuing to work with the Town to continue to comply with the ECE By-law and to resolve issues, including the issues raised in the judicial review application, with minimal legal costs to any party. The safety and security of staff, residents and clients at 310 Division Street remains a top priority and the County is continuing to ensure appropriate plans and procedures are implemented and followed, and continuously work to improve those procedures, including through cooperation with Town staff and the Cobourg Fire Department.

Financial Impact

The full cost of a Judicial Review Application depends on several factors, which depend on the conduct of the application and potential resolution.

Member Municipality Impacts

The Town of Cobourg is a responding party to the County's Judicial Review Application

Conclusion / Outcomes

The County has filed a judicial review application in respect of an order and penalty notice issued under Town of Cobourg By-law 018-224, which has been issued by the Court.

It is strongly advised that any questions regarding the conduct of the application, potential resolution, or instructions to legal counsel be discussed *in camera* to preserve privilege and avoid public comment on a matter that is before the Court.

Attachments

N/A