

Date: March 28, 2022

To: Chair and Members of General Committee

From: Geoff Wright, P.Eng, MBA, Commissioner of
Transportation and Works

Originator's files:

Meeting date:
April 13, 2022

Subject

Property Standards By-law Enforcement Updates

Recommendation

1. That the Property Standards By-law 0654-1998 be updated and amended, as outlined in the report from the Commissioner of Transportation and Works dated March 28, 2022 entitled 'Property Standards By-law Enforcement Updates'.
2. That a three year proactive property standards pilot project be approved, effective April 13, 2022.
3. That a Compliance and Licensing Enforcement (CLE) re-inspection fee of \$350.00 and an administrative fee of \$430.00 or 15% of total costs of the invoice, whichever is greater, be approved and added to Schedule B-1 of the User Fees and Charges By-law 0247-2021.
4. That the 2022 complement for CLE be increased by one permanent Full-Time Equivalent (FTE) Licensing Administration Clerk and six new temporary contract capital FTE positions.
5. That a new cost centre 22654 'Property Standards Enforcement' be created with a gross expenditure budget of \$119,100 offset by a revenue budget of \$119,100 for 2022.
6. That the fees described in Recommendation 3 be deposited in cost centre 22654 Property Standards Enforcement.
7. That a new capital project PN 22-093 'Proactive Property Standards Pilot Project' be established with a gross budget of \$1,691,600 and net budget of \$0.00.
8. That staff report back to General Committee in Q3/2024, as outlined in the report from the Commissioner of Transportation and Works, dated March 28, 2022 entitled 'Property Standards By-law Enforcement Updates'.
9. That all necessary By-laws be enacted.

Executive Summary

- Staff received direction to review the Property Standards By-law 0654-1998 (the "By-law") provisions relating to construction site hoarding and fencing, the management of abandoned, vacant and derelict properties, along with water drainage requirements.

- Staff conducted a property standards enforcement review, which included a jurisdictional scan of seven comparable municipalities' property standards by-laws, enforcement service delivery models and enforcement fees.
- Staff recommend By-law amendments to the fencing, hoarding, land clearing and drainage provisions be implemented synchronously with a directed enforcement strategy to address vacant buildings that are derelict or boarded.
- Staff recommend the implementation of a three year proactive property standards pilot project that will require six temporary FTE Enforcement staff, commencing in Q2 2022.
- Staff recommend that a CLE re-inspection and administrative fee be approved as a cost recovery measure. One additional permanent FTE Licensing Administration Clerk is required to administer and process these new fees.
- The Regulatory Services Operating Budget impact is projected to be fully recovered from the fees collected in year 2022 and in subsequent years.

Background

Since 2019, numerous Councillor enquiries relating to property standards have been received by staff. Reports were brought forward to General Committee in 2020 on grading and drainage as well as on the enforcement of property standards. The subsequent resolutions resulted in direction to Enforcement staff to report back on potential By-law amendments and heightened enforcement practices relating to construction site hoarding and fencing, the management of abandoned, vacant and derelict properties, along with water drainage requirements.

In order to address widespread deterioration and repeated lot maintenance concerns, Councillors regularly request that Compliance and Licensing Enforcement (CLE), conduct proactive property standards inspections. These requests have been specific to vacant and occupied properties, including both commercial and residential land.

In response to Council direction and ongoing enquiries, CLE conducted a property standards enforcement review. This report summarizes staff findings and provides recommendations related to:

1. The Property Standards By-law (the By-law);
2. Enforcement Service Delivery; and
3. Proposed Enforcement Fees.

Present Status

1. PROPERTY STANDARDS BY-LAW

Property standards by-laws are limited to prescribing standards for the maintenance and occupancy of property pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23.

Construction Site Hoarding and Fencing

The By-law prescribes minimum maintenance standards that include the requirement for fencing to be structurally sound, free from defects and maintained in a good state of repair (section 25). In the case of hoarding, the By-law also requires that it be secure and free of unauthorized signs and posters (section 29). The By-law does not currently prescribe standards for fencing to be of uniform construction or require hoarding to be constructed in a manner to prevent litter or debris from blowing onto adjacent properties.

Abandoned, Vacant and Derelict Properties

The By-law contains a general provision that requires all buildings or structures, or parts thereof that are unfinished to be finished in an acceptable manner within a reasonable timeframe and in accordance with all applicable laws (section 14). Currently, CLE undertakes progressive enforcement to address property standards complaints relating to abandoned, vacant and derelict properties, which often results in properties being boarded to protect against unauthorized persons, the entrance of elements and the infestation of pests.

The By-law identifies minimum maintenance standards with respect to the boarding and demolition of vacant or damaged buildings to protect the building and adjoining properties against damage (section 14.1). The By-law outlines temporary and progressive boarding requirements relating to vacant and damaged buildings including, the application of wood, metal and brick or concrete block. Currently, there is a wide variance between complaint files for the duration of time that CLE allows abandoned, vacant and derelict properties to remain boarded.

The By-law also prescribes that all exterior property areas, including vacant land, shall be maintained in a clean and reasonable condition so as to prevent fire, accidents or health hazards (section 28). Currently, the By-law does not prescribe a specific timeframe for properties to be cleared of debris resulting from demolition activities.

With respect to properties that are subject to an active building permit, there is no prescribed timeline for a proponent to complete all work for which the permit has been issued. The *Building Code Act* prescribes that such work be commenced within six months of date of permit issuance, and that the period of time not exceeding one year elapses between permit related work activities. Failure to meet these requirements may result in revocation of the building permit by the Chief Building Official.

Water Drainage

The By-law contains provisions that require low lying or excavated land to be graded or filled to prevent ponding (subsection 28(2)). Furthermore the By-law prescribes that water run-off from roof surfaces be discharged and contained on the property that it originates from so as to prevent flooding of neighbouring lands (subsection 37(3)). Currently, the By-law provisions do not address sources of water drainage such as sump pumps or privately owned catch basins that, if discharged improperly or are damaged or obstructed, may contribute to the flooding of neighbouring land. Residents that are affected by these concerns may choose to initiate civil litigation in an effort to resolve them.

2. ENFORCEMENT SERVICE DELIVERY

Currently, CLE does not conduct proactive inspections related to property standards or lot maintenance concerns, except when a health and safety risk is identified during the course of a reactive inspection. All complaints are investigated within five days of receipt and once compliance has been achieved, complaint files are closed. Currently, CLE does not conduct proactive follow up inspections after compliance has been reached. CLE requires a subsequent public complaint in order to initiate a new complaint investigation.

3. ENFORCEMENT FEES

A considerable amount of CLE resources are dedicated to escalated enforcement and file management for non-compliant properties. The *Municipal Act, 2001* (section 391), authorizes a municipality to impose fees or charges on persons to recover certain costs. Currently, CLE does not utilize any cost recovery methods for enforcement of non-compliant properties.

Comments

1. PROPERTY STANDARDS BY-LAW

Jurisdictional Scan: Property Standards

Staff conducted a jurisdictional scan of seven other municipalities' property standards by-law regulations including, the Town of Oakville and the Cities of Brampton, Burlington, Hamilton, Ottawa, Markham and Toronto (Appendix 1).

Recommendation: Property Standards By-law Amendments

Staff are proposing six By-law amendments that will support the enhancement of community standards and align By-law requirements with those of comparable municipalities (Table 1).

Table 1: Recommended Property Standards By-law Amendments

| Item | Relating To | Provision | Recommendation |
|------|---------------|----------------|---|
| 1 | Fencing | Amend Existing | A provision for a fence to be uniform in appearance and be maintained to properly perform its intended function |
| 2 | Fencing | New | A provision to enclose a building or land that is unoccupied, abandoned or otherwise vacant beyond a reasonable timeframe to prevent unauthorized entry or dumping |
| 3 | Hoarding | Amend Existing | A provision for hoarding to be constructed in a uniform manner and to prevent all litter and debris from blowing onto adjoining property |
| 4 | Land Clearing | New | A provision for a 30 day timeframe for a site to be cleared after a building, structure or fence has been demolished |
| 5 | Sump Pumps | New | A provision to prohibit water from sump pumps from being discharged from a building in a manner that causes ponding or flooding of neighbouring lands |
| 6 | Catch Basins | New | A provision to mandate that privately owned catch basins are maintained in good repair and free of debris and obstructions which may prevent them from functioning properly |

Directed Enforcement Strategy: Existing Regulations

CLE addresses property standards violations at vacant buildings through progressive enforcement. Once an order to secure a building has been complied with the complaint is closed. CLE does not regularly require vacant boarded buildings to undergo permanent repairs such as the replacement of damaged or missing windows or doors, provided the building remains boarded.

In order to address concerns regarding deteriorating property standards at abandoned, vacant and derelict properties, CLE will implement a directed enforcement strategy using the existing By-law regulations and definitions to:

- Require all derelict buildings be finished in an acceptable manner within one year, in accordance with all applicable laws (section 14). CLE will enforce this provision using the By-law definition of “Reasonable timeframe”, which means a short period of time deemed to be acceptable by a Property Standards Officer, not exceeding one year (section 2).
- Require permanent repairs be made to buildings after they have been boarded for six months (section 14.1). CLE will enforce this provision using the By-law definition of “Temporary”, which means a period of time that is not to exceed a six month period (section 2).

2. ENFORCEMENT SERVICE DELIVERY

Jurisdictional Scan: Enforcement Service Delivery

Of the seven jurisdictions surveyed (Appendix 2), staff found that the Cities of Brampton, Hamilton and Ottawa all implement a proactive service delivery relating to property standards and lot maintenance issues.

Proactive Service Delivery

A proactive service delivery model uses a directed enforcement strategy to ensure that staff resources are deployed in a manner that is consistent with community needs. Proactive inspections require the use of dedicated resources for the provision of early identification, education and enforcement of municipal standards.

Recommendation: Proactive Property Standards Pilot Project

In response to ongoing demands for enhanced property standards enforcement, staff recommend the implementation of a three year proactive property standards pilot project, commencing in Q2 2022. The pilot project will allow staff to determine costs, benefits and the feasibility of a permanent proactive service delivery model.

Proposed Approach to Proactive Inspections

Dedicated staff will proactively patrol the city to identify and resolve property standards and lot maintenance related violations that constitute a health or safety risk to members of the public or that are egregious in nature. Additionally, staff will utilize existing data to compile an inventory of specific properties and geographic areas where deteriorating maintenance standards exist, to inform proactive inspection deployment.

The proposed proactive inspection model will include:

- Unfinished, abandoned, vacant and derelict properties;
- Properties with a history of non-compliance;
- Areas where an increased frequency of violations are detected; and
- Other properties as determined by Enforcement.

The frequency of inspections will be determined by:

- Perceived public health and/or safety risk;
- Magnitude, nature and duration of the violation; and
- Environmental and community impact.

Monitoring and Assessment

A pilot project is recommended for 2022-2024 because of several variables that will impact both fees collected and operating costs. These variables include:

- **Violation Rates:** These rates are based on historical complaint data, however deploying MLEOs into the field is the optimal means to validate these projections. The number of violations will ultimately inform the future resourcing needs to sustain a proactive service level.
- **Compliance Rates:** If a proactive model is effective, then compliance rates should increase over time and positively impact the violation rates.
- **Fees:** The re-inspection and administrative fees that will be introduced in Item 3 of this report have a wide potential range for recovery amounts and are linked to the other variables identified above. The fees collected would be used to fund a permanent service level increase.

In addition to measuring these variables, the three year monitoring and assessment period will also serve to:

- Measure service levels including: initial response, average staff time per file and complaint resolution times in order to determine the effectiveness of a proactive approach.
- Evaluate new enforcement tools such as enhanced by-law regulations and the use of the Administrative Monetary Penalty System for violations.
- Evaluate other jurisdictional frameworks and monitor changes.

Pilot Project Staffing

A proactive service delivery model will result in an increase in the number of complaint files, sanctions issued, and remedial actions undertaken by the City. A total of four Municipal Law Enforcement Officers (MLEOs), one Licensing Administration Clerk and one Business Analyst will be required to develop, implement and assess this new service delivery. All six temporary capital FTE staff positions are being requested for a three year period.

In order to implement a proactive inspection pilot project without requiring funding from the general tax base, the cost recovery strategies identified in Item 3 of this report are recommended to be implemented simultaneously.

3. ENFORCEMENT FEES

Jurisdictional Scan: Enforcement Fees

Of the seven jurisdictions surveyed (Appendix 2), staff found that all municipalities applied between one and three fees for repeated non-compliance of municipal by-law regulations. The majority of the jurisdictions impose fees that may be combined. These fees may be applied at various stages of an investigation, in accordance with relevant standard operating procedures.

The most common types of enforcement fees utilized by the jurisdictions examined were:

- **Re-inspection Fees:** Applied to recover costs associated with the additional resources allocated to the inspection of non-compliant properties where a mandated compliance date has passed and the deficiency or violation remains (All seven jurisdictions utilize this type of fee).
- **Administrative Fees:** Applied to recover costs associated with property remediation undertaken by the City, including, staff resources allocated to arrange, attend and process files that are required to be remediated (Six jurisdictions utilize this type of fee).

Of the jurisdictions examined, it was found that the City of Toronto imposes the highest combination of fees, consisting of a re-inspection fee of \$502.28 and an administrative services fee of \$211.26. Additionally, the City of Toronto imposes a remedial work fee, which ranges from \$100.00, up to \$2,000.00, which is determined based on the total remediation contract cost. Staff also found that the City of Ottawa charges a re-inspection fee of \$500.00.

Recommendation: Enforcement Fees

In order to recover costs related to the re-inspection and remediation of properties in instances of repeated non-compliance, staff recommend that a re-inspection fee and administrative fee be approved and added to Schedule B-1 of the User Fees and Charges By-law 0247-2021.

Table 2: Recommended Enforcement Fees

| Enforcement Fee | Amount |
|---------------------------|--|
| Re-Inspection Fee | \$350.00 |
| Administrative Fee | \$430.00 or 15% of total remediation costs, whichever is greater |

Fees collected from the proposed enforcement fees will be utilized to fund the expenditures relating to the pilot project that is proposed in Item 2 of this report.

Re-Inspection Fee

The introduction of a re-inspection fee will allow for cost recovery where the City expends significant time and resources in investigating repeat violations of municipal by-laws.

CLE will continue the current practice of responding to service requests and conducting investigations as a service offered by the City and funded through the general tax base. No re-inspection fee will be imposed for the initial inspection to identify a violation or for the final inspection to confirm compliance and close the file. A re-inspection fee will only be applied when a Notice or Order has not been complied with and subsequently requires additional staff time to re-inspect, manage and resolve the identified violation(s). The frequency of re-inspections resulting in a fee will be assessed based on factors such as health and safety risk and environmental and community impact.

Administrative Fee

The introduction of an enforcement administrative fee will allow the City to recover costs resulting from the increased resources dedicated to property remediation undertaken by the City in instances of repeated non-compliance.

When administering property remediation undertaken by the City, there are several variables that may impact actual costs, including but not limited to the size and nature of a violation. In instances involving larger and more complex property remediation, it is estimated that administrative costs incurred by the City may exceed the fixed fee of \$430.00. In these cases a fee of 15% of the total remediation costs will be applied as a method of cost recovery.

CLE will continue to undertake property remediation upon expiration of a notice or order where there is continued non-compliance. The costs incurred for any remediation will continue to be billed to the person responsible for the violation(s); however, CLE will also add the administrative fee as a separate charge on each invoice.

Fee Administration

CLE will provide notification on notices and orders that enforcement fees will be applied in the event of non-compliance. The proposed fees will be billed directly to the violator and, if unpaid, will follow the City's Collections policies as applicable.

Forecast: Complaint Files

CLE's five year average reactive complaint volume for property standards and lot maintenance related matters is 4,234 files per year (Table 3). Staff forecast that if the proposed city-wide proactive pilot project is implemented, it will result in an increase of approximately 3,599 property standards and lot maintenance files (85%) per year. Staff analysis revealed a reduction of these complaints in 2020 and 2021 due to the impact of COVID-19. Staff project that complaint volume will increase as the City moves towards recovery.

Forecast: Failed Re-inspection Rates (Re-inspection Fees)

Currently, failed re-inspection rates are not a performance metric tracked by CLE. A sample of data found that on average, a non-compliant property will be re-inspected four times prior to being brought into compliance. If the proposed re-inspection fee is introduced, it is expected that the number of failed re-inspections will be reduced. As a result, staff project a reduction of failed

re-inspections from four to one for reactive complaint files. However, staff project an increase in the number of failed re-inspections from one to one and one half per file from the pilot project. This will be attributed to directed enforcement addressing problematic properties with a history of non-compliance. Staff forecast that the proposed pilot project will result in an average of 731 additional failed re-inspections where a re-inspection fee is applicable (Table 3).

Forecast: Remediation Rates (Administrative Fees)

CLE's five year average for City led property remediation is 236 files per year (Table 3). CLE ceased non-emergency property remediation on several occasions in 2020 and 2021, due to the impact of COVID-19. Staff forecast that the proposed pilot project will result in an average increase of 540 files per year requiring the City to undertake remedial action. The projected increase in property remediation will be a result of frequent proactive inspections of properties with a history of non-compliance.

Table 3: Property Standards & Lot Maintenance Yearly Forecasts (Based on 2017-2021 Data)

| Activity | Yearly Volume: Reactive | Yearly Volume: Proactive | Yearly Volume: Total |
|------------------------------------|----------------------------|-----------------------------|-------------------------|
| Files to be Investigated | 4,234 | 3,599 | 7,833 |
| Re-Inspection Fees Applied | 234 | 731 | 965 |
| Administrative Fees Applied | 236 | 540 | 776 |

Administrative Staffing Requirements

One additional permanent FTE Licensing Administration Clerk will be required to administer and process the recommended fees generated from reactive service requests during and following the pilot project period.

Report Back to General Committee

Staff will report back to General Committee in Q3/2024 with recommendations regarding the suitability of adopting a permanent proactive enforcement service delivery model. These recommendations will be based on actual fees collected, operating costs and compliance rates.

Financial Impact

Staff forecast that there will be no additional pressure to the City's property tax rate as a result of implementation of the proposed fees and capital pilot project.

Operating Budget Impact: Reactive Complaints with Fees

In order to administer the proposed enforcement fees, this report is requesting one permanent FTE, Licensing Administration Clerk, salary grade C, to be filled upon approval. The financial impact is projected to have a net revenue of \$46,000 in 2022 and \$118,500 in year 2023 (Table 4). In 2022, the excess fees collected of \$46,000 will be transferred to Fiscal Stability Reserve fund, account # 30125.

Table 4: Proposed Operating Budget Impact

| Expense Categories | 2022 Operating Budget (Apr-Dec) | 2023 Operating Budget | 2024 Operating Budget | 3 year Operating Budget |
|---------------------------------|--|-----------------------------|-----------------------------|-------------------------------|
| Operating Labour Costs | \$ 48,600 | \$ 74,000 | \$ 75,200 | \$ 197,800 |
| Operating Costs | \$ 24,500 | \$ 1,400 | \$ 1,400 | \$ 27,200 |
| Transfer to Reserve Fund | \$ 46,000 | | | \$ 46,000 |
| Other Operating Expenses | \$ 70,500 | \$ 1,400 | \$ 1,400 | \$ 73,200 |
| Total Gross Expenditure | \$ 119,100 | \$ 75,400 | \$ 76,600 | \$ 271,000 |
| Re-Inspection Fee | \$ 51,200 | \$ 83,400 | \$ 84,900 | \$ 219,500 |
| Administrative Fee | \$ 67,900 | \$ 110,500 | \$ 112,400 | \$ 290,800 |
| Total Revenues | \$ 119,100 | \$ 193,900 | \$ 197,300 | \$ 510,300 |
| Net Cost/(Revenue) | \$ - | \$ (118,500) | \$ (120,700) | \$ (239,300) |

Capital Budget Impact: Pilot Project

In order to implement the proposed pilot project, this report is requesting six temporary capital FTE positions; four MLEOs, salary grade E one Licensing Administration Clerk, salary grade C and one Business Analyst, salary grade F, to be filled upon approval. The financial impact resulting from the implementation of capital pilot project (PN 22-093) is projected to have a gross budget of \$1,691,600 over the three year period (2022-2024). The fees collected from proactive inspections are projected to offset the capital expenditures and will result in a zero net cost from 2022 to 2024 (Table 5). The expenditures are related to six temporary contract capital FTE staff, costs for equipment, IT support, and associated inspection and mileage expenses.

Table 5: Proposed Capital Budget Impact

| Expense Categories | 2022 Proposed Capital Budget (Apr-Dec) | 2023 Proposed Capital Budget | 2024 Proposed Capital Budget | 3 year Proposed Capital Budget |
|--------------------------------|---|------------------------------------|------------------------------------|--------------------------------------|
| Labour and Benefits | \$ 389,400 | \$ 594,300 | \$ 604,600 | \$ 1,588,300 |
| Other Operating Costs | \$ 49,900 | \$ 25,600 | \$ 27,800 | \$ 103,300 |
| Total Gross Expenditure | \$ 439,300 | \$ 619,900 | \$ 632,400 | \$ 1,691,600 |
| Re-Inspection Fee | \$ 239,700 | \$ 390,300 | \$ 397,100 | \$ 1,027,100 |
| Administrative Fee | \$ 155,100 | \$ 252,500 | \$ 256,900 | \$ 664,500 |
| Total Revenues | \$ 394,800 | \$ 642,800 | \$ 654,000 | \$ 1,691,600 |
| Net Cost/(Revenue) | \$ 44,500 | \$ (22,900) | \$ (21,600) | \$ - |

Conclusion

In response to Council direction and enquiries related to property standards concerns, staff reviewed the By-law requirements, enforcement service delivery, and enforcement fees. The recommendations contained within this report will support the enhancement of community standards.

Updated By-law requirements will align property standards regulations with those of comparable municipalities. The proposed proactive pilot project will utilize a progressive and directed enforcement approach, resulting in increased responsiveness to municipal by-law violations. Furthermore, the adoption of new enforcement fees will contribute to the City's financial sustainability by recovering enforcement costs and also funding the proposed pilot project.

Attachments

Appendix 1: Jurisdictional Scan of Property Standards By-law Provisions

Appendix 2: Jurisdictional Scan of By-law Enforcement Service Delivery and Fees



Geoff Wright, P.Eng, MBA, Commissioner of Transportation and Works

Prepared by: Chris Giles, Manager, Compliance and Licensing Enforcement