

8. PROPERTY STANDARDS BY-LAW REVIEW

EXAMEN DU RÈGLEMENT SUR LES NORMES D'ENTRETIEN DES BIENS

COMMITTEE RECOMMENDATIONS

That Council:

1. Approve amendments to the Property Standards By-law (No. 2013-416, as amended) as outlined in Document 1 and described in this report to:
 - a) Define and replace the word “abutting” with “neighbouring” in the provisions of the by-law that address outdoor lighting;
 - b) Repeal the definition of “graffiti” and repeal the term where it is used in the by-law;
 - c) Incorporate various minor ‘housekeeping’ amendments to the by-law;
2. Approve an amendment to the Graffiti Management By-law (No. 2008-1, as amended) as outlined in Document 1 and described in this report;
3. Authorize the Manager, By-law & Regulatory Services Branch, to finalize and make minor adjustments to the amending by-law.

RECOMMANDATIONS DU COMITÉ

Que le Conseil :

1. approuve les modifications au *Règlement sur les normes d'entretien des biens* (n° 2013-416, dans sa version modifiée) énoncées dans le document 1 et dans le présent rapport, qui visent à :
 - a) remplacer le terme « contiguë » par « avoisinante » dans les dispositions sur l'éclairage extérieur et ajouter une définition;

- b) retirer la définition de « graffiti » et supprimer le terme du Règlement;
 - c) apporter quelques rectifications mineures d'ordre administratif;
2. approuve la modification au *Règlement sur le contrôle des graffitis* (n° 2008-1, dans sa version modifiée) énoncée dans le document 1 et dans le présent rapport.
 3. autorise le gestionnaire, Services des règlements municipaux à mettre la touche finale et à apporter des modifications mineures au règlement municipal modificatif.

DOCUMENTATION/DOCUMENTATION

1. Manager, By-law & Regulatory Services report dated 24 August 2017 (ACS2017-EPS-GEN-0013)

Rapport du Gestionnaire, Services des règlements municipaux, daté le 24 août 2017 (ACS2017-EPS-GEN-0013)

2. Extract of draft Minutes, Community and Protective Services Committee, 31 August 2017.

Extrait de l'ébauche du procès-verbal, Comité des services communautaires et de protection, le 31 août 2017

**COMMUNITY AND PROTECTIVE
SERVICES COMMITTEE
REPORT 25
13 SEPTEMBER 2017**

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**COMITÉ DES SERVICES
COMMUNAUTAIRES ET DE
PROTECTION
RAPPORT 25
LE 13 SEPTEMBRE 2017**

**Report to
Rapport au:**

**Community and Protective Services Committee
Comité des services communautaires et de protection
31 August 2017 / 31 août 2017**

**and Council
et au Conseil
13 September 2017 / 13 septembre 2017**

**Submitted on August 24, 2017
Soumis le 24 août 2017**

**Submitted by
Soumis par:
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Services des règlements municipaux**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA
VILLE**

File Number: ACS2017-EPS-GEN-0013

SUBJECT: Property Standards By-law Review

OBJET: Examen du Règlement sur les normes d'entretien des biens

REPORT RECOMMENDATIONS

That the Community and Protective Services Committee recommend that Council:

- 1. Approve amendments to the Property Standards By-law (No. 2013-416, as amended) as outlined in Document 1 and described in this report to:**
 - a) Define and replace the word “abutting” with “neighbouring” in the provisions of the by-law that address outdoor lighting;**
 - b) Repeal the definition of “graffiti” and repeal the term where it is used in the by-law;**
 - c) Incorporate various minor ‘housekeeping’ amendments to the by-law;**
- 2. Approve an amendment to the Graffiti Management By-law (No. 2008-1, as amended) as outlined in Document 1 and described in this report;**
- 3. Authorize the Manager, By-law & Regulatory Services Branch, to finalize and make minor adjustments to the amending by-law.**

RECOMMANDATIONS DU RAPPORT

Que le Comité des services communautaires et de protection recommande au Conseil :

- 1. d'approuver les modifications au *Règlement sur les normes d'entretien des biens* (n° 2013-416, dans sa version modifiée) énoncées dans le document 1 et dans le présent rapport, qui visent à :**
 - a) remplacer le terme « contiguë » par « avoisinante » dans les dispositions sur l'éclairage extérieur et ajouter une définition;**

- b) retirer la définition de « graffiti » et supprimer le terme du Règlement;**
 - c) apporter quelques rectifications mineures d'ordre administratif;**
- 2. d'approuver la modification au *Règlement sur le contrôle des graffitis* (n° 2008-1, dans sa version modifiée) énoncée dans le document 1 et dans le présent rapport.**
 - 3. d'autoriser le gestionnaire, Services des règlements municipaux à mettre la touche finale et à apporter des modifications mineures au règlement municipal modificatif.**

EXECUTIVE SUMMARY

Assumption and Analysis

In June 2015, Council approved a By-law Review Strategy for the purpose of identifying and prioritizing by-laws to be re-examined for accuracy, relevance and effectiveness. The By-law Review Strategy further identified the scope of each by-law review through the identification of specific issues to be addressed through the course of the review.

The City's Property Standards By-law (2013-416, as amended) was identified as a priority for Council. In 2005, Council enacted the harmonized By-law No. 2005-207, known as the Property Standards By-law, to provide for standards under which properties are maintained. Since its enactment, the by-law has been amended several times to address a variety of definitions and functions. A comprehensive review of the by-law was completed in 2013 and resulted in a new and updated by-law that addressed other issues such as vacant buildings and lands, and heritage properties, and enhanced existing provisions.

However, a few additional issues were raised as part of the By-law Review Strategy. This review therefore focused on those issues which included: lighting; safe passage (ice and snow maintenance); fences; and graffiti. As similar issues are covered in the Property Maintenance By-law (2005-208, as amended) and the Graffiti Management By-law (2008-1, as amended), it was also included in the scope of this review.

Following a best practice review and consultations with the public, as well as internal and external stakeholders, staff is recommending minor amendments to the Property Standards By-law and the Graffiti Management By-law, as described in Document 1, as the most appropriate mechanism to address the issues raised, and to incorporate minor housekeeping amendments.

As a result of the review, amendments related to lighting and graffiti provisions of the by-law are being recommended. Staff is however not recommending amendments to the safe passage and fence provisions of the by-law for the reasons outlined in this report.

Financial Implications

There are no direct financial implications associated with this report.

Public Consultation/Input

Staff of By-law & Regulatory Services reviewed issues and options with other relevant department and partners, including: Property Standards Officers as well as By-law Enforcement Officers; Planning, Infrastructure and Economic Development; Fire Services; Building Code Services; Community and Social Services; Accessibility Office; Public works and Environmental Services. Options developed under the study were presented in a Property Standards Discussion Paper and shared with external stakeholders in Business Improvement Areas, various community organizations and key stakeholder groups including: the Association of Community Organizations for Reform Now (ACORN); Action Sandy Hill (ASH); the Building Owners and Managers Association (BOMA); and the Eastern Ontario Landlord Organization (EOLO). Information was also posted on the City's website, along with a comprehensive survey. One in-person consultation session was held at McNabb Recreation Centre on July 10. Additionally, a meeting was requested by a group of residents of Hintonburg and took place on July 19. A total of 14 residents participated in these two in-person consultations. The results of the consultations are outlined in Document 2.

Awareness of the review was raised through Public Service Announcements, the City website and social media accounts, and through communications of Members of Council with their residents. Additionally, public opinion research was commissioned

through an external consultant to evaluate city-wide attitudes on a number of property standard related topics, as outlined in Document 3. Data collected from these consultations has informed the final recommendations, resulting in minor amendments to the by-law.

BACKGROUND

The administration and enforcement of the Property Standards By-law are pursuant to the Building Code Act.

In 2005, Council enacted By-law No. 2005-207, known as the Property Standards By-law, to provide for standards under which properties are maintained. The by-law was a harmonization of the former municipal property standards regulations following amalgamation. Since its enactment in 2005, the by-law has been amended a number of times to address a variety of definitions and functions.

In 2008, as a result of the enactment of the Graffiti Management By-law, the Property Standards By-law was amended to replace the words “unsightly markings, stains, or other defacements” with the word “graffiti”. A definition of “graffiti” was also added to the by-law.

In 2009, various licensing and regulatory by-laws, including the Property Standards By-law, were amended to replace certain definitions. The by-law was amended by changing the definition of “Chief Property Standards Officer” to include the change of the department name as well as adding “or authorized representative” rather than simply “the person holding the position of Director”.

A comprehensive review of the Property Standards By-law No. 2005-207 was undertaken in 2013 and resulted in that by-law being repealed and replaced with an updated by-law (2013-416) containing additional new provisions, as summarized below:

- Part IV to specifically address Vacant Buildings and Lands
- Part VI related specifically to standards for heritage properties, outlining requirements that ensure the maintenance of heritage features
- Requirement for maintenance of major appliances where provided
- Expansion and clarification of the definition of “refuse and debris”

- Inclusion of a definition of “structure” to include play structures and sheds and prohibiting structures that are unsafe or unsecured
- Expansion of the definition of “vermin” to include commonly-encountered vermin such as bed bugs
- Requirement that furniture used outdoors be kept in a clean and tidy condition, and maintained in good repair

A number of ‘housekeeping’ amendments to existing provisions were also made and included in the new by-law.

Approximately 10,000 Service Requests related to property standards are received by By-law & Regulatory Services annually. Overall, the by-law has been effective in addressing concerns.

However, in 2015 Council identified a number of specific policy areas, through the By-law Review Strategy report, and staff was asked to re-examine certain provisions of the Property Standards By-law and recommend any changes necessary to provide for the effective management of property standards in the community with respect to the specific issues raised.

Issues identified include:

- Lighting (specifically the wording “abutting” properties)
- Safe Passage (snow and ice maintenance)
- Fences (specifically the term “unsightly”)
- Graffiti

Response standards, timelines for emergency repairs and improving enforcement of property standard violations were raised in the 2015 Strategy report and are addressed later in this report. The issue of car shelters being enforced on a case-by-case basis was also raised but this is a zoning issue, not covered by the Property Standards By-law, and is therefore out of scope for this review.

Additionally, the issue of property maintenance to include City owned lands was raised and is also out of scope as City owned lands are maintained and addressed by the Use and Care of Roads By-law.

DISCUSSION

The Property Standards By-law underwent a comprehensive review in 2013, resulting in an updated re-enacted by-law. Largely on that basis, the issues in scope for this review are relatively minor in nature. In addition to the policy issues identified by Council in the By-law Review Strategy Report adopted in June 2015, a number of minor ‘housekeeping’ amendments seemed in order following discussions that took place as part of the consultation process. Staff is therefore recommending amendments to address these items, as detailed in this report.

Recommendation 1a) – Lighting (“abutting” properties)

Staff is recommending replacing the word “abutting” with “neighbouring”, accompanied by a definition, and proposing wording that recognizes that lighting is required for public health and safety.

Currently, the Property Standards By-law requires that lights used to illuminate areas used for vehicular and pedestrian traffic, or parking, be deflected away from “abutting” residential properties. As a component of the review, staff was asked to examine alternative language related to lighting to be more inclusive as there is some difficulty addressing lighting concerns or complaints emanating from properties not directly abutting another property (i.e. across the road).

Although very few complaints regarding exterior lighting, or lighting in general, have been received by By-law & Regulatory Services (an average of 137 complaints a year City-wide), the use of a broader term would allow a By-law Officer to address lighting coming from a wider range of sources that are causing a potential nuisance to residents in the vicinity. By amending the terminology used in the relevant provisions of the by-law, Officers would be able to address lighting concerns more effectively for surrounding

properties that are affected. The change in terminology would not include lighting that is required by law or for public health and safety (i.e. streetlights or construction lights).

As part of the Public Opinion Survey, residents were asked if light pollution from neighbours is a problem. Survey results indicate that:

- 12% of participants agreed that light pollution is a problem
- 14% of participants somewhat agreed that light pollution is a problem
- 73% of participants disagreed that light pollution is a problem

Recommendation 1b) and Recommendation 2 – Graffiti

Staff is recommending repealing the “graffiti” definition and references to “graffiti” in relevant provisions of the Property Standards By-law, and that enforcement of graffiti issues be handled solely through the Graffiti Management By-law, which provides for a timelier enforcement mechanism.

As part of the review, staff was asked to examine the need for several by-laws addressing the same issue and to consider adding a “prescribed manner” in which graffiti should be removed from property and refinished.

There are currently three Ottawa by-laws in which the requirement to remove “graffiti” is referenced: the Property Standards By-law, the Graffiti Management By-law, and the Fence By-law. As the Property Standards By-law is enacted under the Building Code Act, which legislates compliance timeframes, the enforcement mechanism under the by-law requires a minimum 19-day compliance period – 5 days for service of a Notice or Order, and a 14-day appeal period to Orders – thereby creating a longer than perhaps necessary compliance due date that also conflicts with the 7-day compliance period prescribed by the Graffiti Management By-law, which is enacted under the Municipal Act.

The manner of finish is important to prescribe in a regulatory framework because it requires that the removal process meet a certain standard, preventing inadequate work from being completed and would set a consistent standard for all graffiti removal.

The manner in which graffiti should be removed may vary given the situation (i.e. type of paint used, material on which the graffiti is placed, length of time the graffiti has been on the structure). Therefore, prescribing a manner of removal would prove cumbersome to define, as it would depend on the circumstances and condition of the material where the graffiti was placed.

Staff is therefore recommending a minor amendment to the Graffiti Management By-law to include a provision similar to Section 17(4) of the Property Standards By-law that addresses the issue of identifying a manner of finish; that is, the proposed amendment requires that the surface from which the graffiti is removed be returned to its original condition as much as possible, including colour. Public Works and Environmental Services Department supports the proposed amendment.

The number of complaints about graffiti on private property has decreased significantly in the last several years, perhaps indicating that the City has been progressing well in its efforts to prevent graffiti from being placed.

Results of the Public Opinion Survey indicate that over 80% of respondents agree that removal of graffiti is reasonable and prompt.

Recommendation 1c) – Minor ‘housekeeping’ amendments

As a result of discussions with both internal and external stakeholders, a number of minor ‘housekeeping’ amendments seemed in order, to clarify certain provisions of the by-law. Staff is therefore recommending minor amendments to address these items.

Staff is recommending adding the phrase: “including but not limited to a porch, balcony or patio” to the definition of “yard” to ensure that all aspects of that which qualifies as part of a yard is clearly captured in the by-law. This will also help avoid confusion when Officers are addressing violations on the outside of a building, but not necessarily in the yard; for example, balconies.

Staff is also recommending that Section 22(4) of the by-law regarding elevators be amended to read: “Mechanical ventilation, where provided, shall be maintained in operable condition, and turned on, in an elevator”. This will ensure that although mechanical ventilation, where provided, may be operable, it must also be turned on. A

similar amendment to Section 36(9) of the by-law regarding Residential Ventilation is recommended, to read: “All systems of mechanical ventilation or air conditioning shall be maintained in good working order and turned on”. Staff is further recommending that a subsection regarding mechanical ventilation be added to Section 66 of the Non-residential Ventilation provision to match Section 36 of the Residential Ventilation provision.

As well, staff is recommending adding the word “unit” before “dwellings” to section 36(7) regarding ventilation, to clarify that the reference is to “multiple-unit dwellings”.

Staff is further recommending adding a subsection regarding windows and window wells to Section 65 of the Non-residential Light provision to match that of Section 35 of the Residential Light provision.

Recommendation 3

This recommendation would provide staff sufficient authority to draft the amending by-law, to include Council-approved changes and the details associated with them.

Staff is also seeking authorization to make minor housekeeping-type amendments to the identified by-law to adjust definitions including position titles, department names and other elements of similar nature, as required to reflect organizational and other changes that have occurred since the by-law was amended.

General – Issues not requiring by-law amendments

Safe Passage – snow and ice maintenance:

Staff is recommending no changes to the Safe Passage provisions of the by-law.

Snow and ice maintenance is currently regulated by both the Property Standards By-law and the Property Maintenance By-law, providing Officers with a dual mechanism of addressing snow and ice accumulation.

Enforcement of the Property Maintenance By-law, enacted under the Municipal Act, rather than the Property Standards By-law, enacted under the Building Code Act, is a

more expedient way in which to rectify situations of snow and ice accumulation and is the enforcement mechanism generally applied, given the more reasonable timeframes suited to the issue to be addressed. Under the Property Maintenance By-law, Officers can issue a Notice of Violation, pursuant to the Municipal Act, indicating a date of compliance that the Officer feels is reasonable in the situation, including immediately. This means that dangerous situations are addressed and rectified immediately, or within a reasonable time period.

The second mechanism would be by way of an investigation and, if necessary, an Order being issued under the Property Standards By-law to identify and rectify the cause of the problem. For example, icicle build up resulting from heat loss or poor insulation. The dangerous situation can be rectified immediately under the Property Maintenance By-law and an Order can be issued under the Property Standards By-law to correct the underlying problem of heat loss causing the ice to buildup.

Pursuant to the Building Code Act, the Property Standards By-law requires that a minimum of 19 days be given to a property owner to rectify a violation (5 days for service and 14 for appeal). This is not an appropriate mechanism to address dangerous snow and ice accumulations.

Enforcement of both by-laws to address snow and ice allows for immediate rectification where necessary, especially in dangerous situations, as well as the correction of the main cause of the problem, to prevent re-occurring violations.

Fences – “unsightly”:

Staff is recommending no changes to the Fence provision of the by-law.

The fence and other enclosure provisions of the Property Standards By-law provide multiple descriptors other than “unsightly”. Maintaining the current wording provides Officers with more flexibility to address a variety of conditions. Narrowing the definition of the term would restrict the enforcement discretion of Officers in unique circumstances that do not fit within the specific definition of the by-law.

Adding a definition of “unsightly” would restrict the Officers’ ability to use their discretion on a case by case basis in order to determine when an Order or charge should be

issued. Additionally, without a specific definition of “unsightly”, Officers are better able to determine if a complaint is warranted, or if repair(s) need to be undertaken.

Compliance Timeframes:

The issues of response standards, timelines for emergency repairs and improving enforcement of property standard violations were raised in the 2015 Strategy report. Further, the Community and Protective Services Committee at its meeting of April 16, 2015, received the staff response to an inquiry made by Councillor Fleury to advise under what circumstances can a By-law Officer issue an extension to a property owner for a Notice of Violation resulting from a tenant’s complaint, and when is the extension not granted? At that time, the Committee asked staff to report back on what exactly are the timeframes being used for extensions so that Committee and Council can change them if necessary.

Notices of Violation requiring corrective action by property owners are issued by By-law Officers under:

- the Property Maintenance By-law (e.g. long grass/weeds, refuse and debris, snow and ice accumulation);
- the Heat By-law;
- the Board-up By-law;
- the Graffiti Management By-law; and
- the Comprehensive Zoning By-law.

Orders requiring corrective action by property owners are issued by By-law Officers under the Property Standards By-law, in accordance with the Building Code Act.

In the case of both Notices of Violation and Orders, compliance dates are determined based on the following:

- Legislated timelines that require time for a recognized means of service, such as registered mail. For example, the Property Standards By-law is administered and enforced under the Building Code Act, which requires a minimum of 19 calendar days for Orders (14 days for the appeal period and 5 days for service);

- Officer discretion regarding the scope of the work required to meet the requirements of the applicable by-law.
- Weather conditions and season. It is unreasonable to require certain types of work be done in inclement weather or when the ground is frozen, for example.

Extensions to the compliance date may be granted to the property owner on the basis of the following:

- contractor availability;
- the property owner demonstrating progress towards compliance;
- unforeseen circumstances, for example, the contractor reveals more significant structural issues requiring an engineer's review;
- the scope of necessary work changes following its commencement;
- situations in which the tenant is not available to allow access for the work to be undertaken or for re-inspection by enforcement staff.

If the matter concerns a public health or safety risk, there is no discretion with respect to extensions. Extensions are also denied when the property owner does not demonstrate progress towards compliance.

As a result of the recent Sandy Hill Report (ACS2017-CCS-CPS-0004), the Notice of Violation service timeline of 3 days has been added to the Property Maintenance By-law, allowing for quicker compliance rates. Such an amendment is the limit of Council's ability with respect to compliance timeframes on the basis of the authorities provided by the Building Code Act and the Municipal Act.

RURAL IMPLICATIONS

There are no rural implications associated with this report, as the by-law applies city-wide. Data collected from public consultations has been analyzed to consider urban, sub-urban and rural perspectives and this analysis has informed the report recommendations.

CONSULTATION

Staff of By-law & Regulatory Services reviewed issues and options with other relevant department and partners, including: Property Standards Officers as well as By-law Enforcement Officers; Planning, Infrastructure and Economic Development; Fire Services; Building Code Services; Community and Social Services; Accessibility Office; Public works and Environmental Services. Options developed under the study were presented in a Property Standards Discussion Paper and shared with various internal and external stakeholders. Information was also posted on the City's website, along with a comprehensive survey. One in-person consultation session was held at McNabb Recreation Centre on July 10. Additionally, a meeting was requested by a group of residents of Hintonburg and took place on July 19.

Public awareness was raised through a Public Service Announcement, the City website and social media accounts and through the offices of individual Councillors. The online consultation materials were viewed over 600 times and approximately 172 residents participated in the online survey. A summary of consultations is attached to this report as Document 2.

Additionally, public opinion research was commissioned through an outside consultant to evaluate city-wide attitudes on a number of property standard related topics and revealed that residents are generally satisfied with property standards in Ottawa. Data collected from these consultations has informed the final recommendations, resulting in minor changes from the options proposed in the discussion paper. A summary of responses related to property standards has been included as Document 3.

COMMENTS BY THE WARD COUNCILLOR(S)

Not applicable as this is a City-wide report.

ADVISORY COMMITTEE(S) COMMENTS

No advisory committees were consulted in preparation of this report as none are relevant to the subject matter.

LEGAL IMPLICATIONS

There are no legal impediments to the recommendations of this report. Council has the authority under the provisions of the *Building Code Act, 1992* to regulate/prohibit property standards by by-law and the authority under the provisions of the *Municipal Act, 2001* to regulate/prohibit property maintenance by by-law.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no direct financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no direct impacts on persons with disabilities or older adults associated with the contents of this report. All information is available in accessible formats.

TERM OF COUNCIL PRIORITIES

The recommendations of this report support the 2015-2018 Term of Council Priority of Healthy and Caring Communities (HC): Help all residents and visitors enjoy a good quality of life and a sense of community well-being by providing healthy, safe, secure, accessible and inclusive places and services.

SUPPORTING DOCUMENTATION

Document 1: Drafting Instructions – Property Standards By-law (2013-416, as amended) and the Graffiti Management By-law (2008-1, as amended)

Document 2: Summary of Public Consultations (Held on with the City Clerk)

Document 3: Summary of Public Opinion Research with respect to Property Standards
(Held on with the City Clerk)

Document 4: Property Standards Discussion Paper (Held on with the City Clerk)

Document 5: Property Standards Service Request Data 2012-2016 (Held on with the
City Clerk)

DISPOSITION

By-law & Regulatory Services, in conjunction with any other relevant
Branches/Departments, will implement Council directions emanating from this report, as
appropriate.

Upon approval, By-law & Regulatory Services, in conjunction with Legal Services, will
prepare the required by-law amendments for enactment by Council.