



# **Property Standards: Issues and Opportunities**

## **A City of Ottawa Discussion Paper**

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## Introduction

This discussion paper outlines a series of issues with respect to property standards within the City of Ottawa. Feedback collected from this paper will be used to assist in the Property Standards By-law Review currently underway. Recommendations will be submitted to the Community and Protective Services Committee in August 2017.

## Background

### **Property Standards By-law**

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, which are summarized below.

In 2008, 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review of the Property Standards By-law No. 2005-207 was undertaken in 2013 and resulted in that by-law being repealed and replaced with an updated by-law (2013-416) containing additional new provisions, as summarized below: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.

As a result, the issues in the scope of the current review, as outlined in this Discussion Paper, are relatively minor in nature.

**Residential Properties:**

- Yards
- Sewage and drainage
- Walks
- Safe passage
- Fences and other enclosures
- Accessory buildings and other structures
- Garbage disposal
- Vermin prevention
- Basement floors
- Foundations
- Structural soundness
- Exterior walls
- Roof
- Dampness
- Doors, windows and mailboxes
- Stairs, porches and ramps
- Elevators
- Egress
- Guards and handrails
- Walls and ceilings
- Floors
- Cleanliness
- Water
- Plumbing
- Kitchen, powder room and bathroom facilities
- Heating and mechanical systems
- Electrical service
- Light
- Ventilation
- Basement, cellar or unheated crawl space
- Occupancy standards
- Storage space

**Non-Residential Properties:**

- Yards
- Sewage and drainage
- Safe passage
- Accessory buildings and other structures
- Fences and other enclosures
- Signs
- Garbage disposal
- Vermin prevention
- Basement floors
- Foundations

**Non-Residential Properties (Continued):**

- Structural soundness
- Exterior walls
- Roof
- Dampness
- Doors and windows
- Stairs, porches and ramps
- Guards and handrails
- Walls and ceilings
- Floors
- Cleanliness
- Egress
- Heating and mechanical systems
- Plumbing
- Water
- Plumbing
- Restroom facilities
- Electrical service
- Light
- Ventilation
- Basement, cellar or unheated crawl space

**Residential Vacant Buildings and Vacant Lands:**

- Yards and vacant lands
- Sewage and drainage
- Fences
- Accessory buildings and other structures
- Foundations
- Structural soundness
- Exterior walls
- Roof
- Stairs, porches and ramps

**Non-Residential Vacant Buildings and Vacant Lands:**

- Yards and vacant lands
- Sewage and drainage
- Accessory buildings and other structures
- Fences
- Signs
- Foundations
- Structural soundness
- Exterior walls
- Roof
- Stairs, porches and ramps

## **Heritage Properties:**

Minimum standards are set out under this portion of the by-law, including:

- Repair of heritage attributes
- Replacement of heritage attributes
- Vacant and damaged heritage properties.

The administration and enforcement of the Property Standards By-law are pursuant to the *Building Code Act, 1992* (“the Act”). Properties that do not conform to the standards set out under By-law No. 2013-416, may be served with a Notice or an Order, in accordance with the Act. Under the Act, a Notice or Order may be served personally, or by registered mail. If sent by registered mail, the service is deemed to have been made on the fifth (5<sup>th</sup>) day after the day of mailing.

At any time, an officer may rescind the Notice of Violation (NOV), extend time for compliance, modify the requirements of the notice, or abandon the notice and seek resolution by way of an Order.

An owner or occupant who is not satisfied with the terms of the Order may appeal to the License and Property Standards Committee by sending a notice of appeal within fourteen (14) days of being served. Therefore, the minimum response time under the Property Standards By-law is nineteen (19) days, pursuant to the Act.

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.

## **Property Maintenance By-law**

The Property Maintenance By-law (By-law No. 2005-208, as amended), is a by-law that addresses specific subject matter including: refuse and debris; long grass and weeds; dead and dangerous trees; hazardous conditions; garbage disposal; outdoor furniture; drainage/ponding; and snow and ice. The Property Maintenance By-law was enacted in 2005 and has been amended several times. A number of minor ‘housekeeping’ type amendments have been made to the by-law since its enactment. In 2013, concurrent with the new Property Standards By-law note above, several amendments were made to the Property Maintenance By-law including:

- the addition of a definition for “receptacle” and provisions to address maintenance of outdoor receptacles, organic waste and recyclable items
- the addition of provisions regarding decayed or damaged trees or other plants
- new sections addressing:
  - objects or conditions that may create a health or accident hazard
  - garbage disposal
  - outdoor furniture.

Unlike the Property Standards By-law, the administration and enforcement of the Property Maintenance By-law are pursuant to the *Municipal Act, 2001*.

When lands are not maintained in accordance with the requirements set out by the Property Maintenance By-law, a Notice of Violation specifying the time allowed for compliance is sent to the owner (or occupant’s) last known address by either registered mail, or direct delivery. The Notice of Violation requires the owner or occupant to conform to the requirements set out under the Property

Maintenance By-law. If the requirements of the Notice have not been complied with, the City may cause the work to be done at the expense of the owner.

Any person in contravention of any provision of this by-law may be found guilty of an offence and all such offences are designated as continuing offences as provided for under the *Municipal Act, 2001*. Any person convicted of an offence under this by-law may be liable, for each day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000.

## **Scope**

The scope of this review is defined by the issues identified by Council in the By-law Review Strategy Report adopted in June 2015. These include:

- Lighting
- Safe passage – snow and ice maintenance
- Fences
- Graffiti

## **Lighting**

Concern has been raised with the language of s. 12 of the Property Standards By-law (2013-416) regarding light, specifically the word “abutting”. Staff has been asked to review the language 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).

### **Background**

Section 12 of By-law 2013-416 requires that any outdoor lighting deflect away from abutting properties. Use of the word “abutting” in s. 12 has raised some concerns due to its potential restrictiveness, as this word may be interpreted narrowly so that it only includes properties that share a common boundary with one another.

Use of a broader term would allow a By-law Officer to capture lighting coming from a wider range of sources. There seems to be no consensus among the major municipalities in Canada given that most either do not regulate outdoor lighting, or use different language where light is regulated. However, as the word “abutting” is likely the most restrictive word that could be used, a broader term could replace it which would allow enforcement staff to exercise more discretion and would allow residents not to be disturbed by unnecessary lighting.

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), a change of wording to facilitate enforcement and provide peace to residents bothered by lighting should be examined.

### **Options**

#### **A) Replace “abutting” with “neighbouring”**

The City of Kingston applies broad language in its by-law regarding lighting, using the word “neighbouring” rather than “abutting” properties.

Changing this terminology would allow Officers to exercise a greater amount of discretion when enforcing light complaints and would not be restricted to properties that are directly

beside one another. Rather, by amending the terminology used in this provision of the by-law, Officers will be able to address lighting concerns more effectively for surrounding properties that are affected.

**B) Replace “abutting” with “nearby properties”**

Similarly, in Windsor, the term “nearby properties” is used. The use of the word “nearby” would prevent a resident from arguing that they are casting light on a property with which they do not share a property line, a circumstance that occurs with the current use of the term “abutting”, and could be just as problematic with synonyms such as “adjoining” or “adjacent”.

In this case, the by-law would clearly capture surrounding properties rather than just properties located directly next to one another, again, providing enforcement staff with the ability to exercise greater discretion when it comes to lighting complaints.

**Preferred Option**

Staff is recommending Option “A” – replacing the term “abutting” with “neighbouring” properties. This approach appears to grant Officers the greatest ability to use discretion when responding to issues regarding light. Alternatively, the term “nearby properties” would serve a similar function but has potential to be interpreted more broadly than “neighbouring”, with a possibility of this term extending to properties outside of the surrounding area that are actually affected by the light.

The term “nearby” describes a property that is ‘not far away; close’, as defined by the Oxford Dictionary, whereas the term “neighbouring” covers a more specific and closer range of properties within a given area. The term “neighbouring”, as defined by the Oxford Dictionary, means ‘next to, or very near another place’. This would allow By-law Officers to enforce light complaints where properties are not located directly beside one another. Additionally, using the term “neighbouring” avoids the possibility of broader interpretation of the term “nearby”. The change in wording would not include lighting which is required by law (i.e. street lights, construction lights, etc.).

## **Safe Passage – Snow and Ice Maintenance**

Staff has been asked to explore new approaches for handling dangerous snow and ice removal, given the time constraints imposed by the Notice of Violation (NOV) process. Staff was asked to consider same day removal with charge back to the offender, as well as proactive monitoring.

**Background**

Snow and ice maintenance is regulated by both the Property Standards By-law and the Property Maintenance By-law. Under the Property Maintenance By-law, when lands are not maintained pursuant to the requirements of the by-law, a Notice is sent either by registered mail or hand delivered, requiring the owner to make the lands conform to the requirements of the by-law within a time period the Officer determines to be reasonable. If the requirements of the Notice have not been complied with, the City may cause the work to be done at the expense of the owner and a charge for non-compliance may also be issued.

Alternatively, under the Property Standards By-law, if an Officer finds that a property does not conform with the standards prescribed in the by-law, the Officer may seek informal compliance prior to the issuance of an Order, or may issue an Order, where a minimum of 19 days must be given to the property owner to rectify the matter, 5 of which are for service and 14 for appeal. An owner served

with an Order has a right of appeal to the License and Property Standards Committee within 14 days of receipt of the Order.

The Property Maintenance By-law is the enforcement mechanism generally applied with respect to snow and ice maintenance given the more reasonable compliance timeframes suited to the issue to be addressed.

## **Options**

### **A) Status Quo**

The current Property Maintenance By-law is sufficient in addressing snow and ice accumulation. Rather than addressing violations under the Property Standards By-law, where there is a minimum of 19 days to rectify the violation, Officers can issue a Notice of Violation under the Property Maintenance By-law, pursuant to the *Municipal Act, 2001*, indicating a date of compliance that the Officer feels is reasonable in the situation. This means that dangerous situations are addressed and rectified immediately, or within a reasonable time period.

### **B) Emergency Order Issued in Dangerous Situations**

In the case of dangerous snow and ice accumulation, issuing an Emergency Order for the violation and foregoing the issuance of verbal warnings or Notices of Violation, may result in the violation being rectified sooner. However, an Emergency Order must be reviewed and confirmed by the Court after it has been issued, thus adding an additional and perhaps unnecessary step, and potentially resulting in a risk to the City in the event that the Order is not confirmed.

## **Preferred Option**

Staff is recommending Option “A”. This is the most time effective and practical way of addressing ice and snow accumulation. Under the Property Maintenance By-law (2005-208, as amended), an Officer can issue an NOV with a date of compliance that is necessary and reasonable to correct the problem. Enforcement of the Property Maintenance By-law, rather than the Property Standards By-law, is a more expedient way in which to rectify situations of snow and ice accumulation.



## Fences

Staff has been asked to consider stronger and more specific language in the Property Standards By-law to replace the term “unsightly” with respect to fences. Concern has been expressed that this term is subjective and ambiguous.

### Background

Sections 10 (residential), 44 (non-residential), 74 (residential vacant buildings and vacant lands) and 84 (non-residential vacant buildings and vacant lands) of the Property Standards By-law prevent a fence from presenting an unsightly appearance. The word “unsightly” can seem somewhat subjective, however many other large municipalities also use this same language (Calgary, Mississauga, Markham).

It is important to note that the above-noted provisions of the Property Standards By-law also identify other conditions of a fence that must be met in order to be in compliance with the by-law. The requirement that fences not be unsightly is an effort to prevent fences from becoming unappealing or poorly maintained.

### Options

#### A) Status quo

The fence and other enclosures 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.

#### B) Precisely define “unsightly”

The use of the term “unsightly” could be retained and a definition could be added in order to clarify the meaning of the word. If the idea is only to restrict the physical deterioration of the fence, a definition could be added similar to one found in s. 546(0.1) (b) of the *Municipal Government Act* in Nova Scotia: “property or land that shows signs of serious disregard for general maintenance or upkeep”. Similarly, in Surrey, British Columbia, an “unsightly” fence is described as “characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting”.

#### C) Replace “unsightly” with “visual nuisance”

In the City of Kelowna, British Columbia, there is an ‘Unsightly Premises and Visual Nuisance By-law No. 8217’ which states: “no owner or occupier of real property shall cause or permit a visual nuisance on their premises”. A nuisance is further defined as “any act or omission which obstructs or causes inconvenience or damage to a segment of the public in the exercise of rights common to all members of the public”. This definition would likely restrict the applicability of the by-law. The threshold created by this definition for a fence to be deemed a nuisance seems onerous. If this option is to be considered, a broader definition of “visual nuisance” would also have to be included.

## Preferred Option

Staff is recommending Option “A”, maintaining the status quo. 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.

Replacing “unsightly” with “visual nuisance” could encourage neighbour disputes based on varying opinions and interpretations of what is a “visual nuisance”. Even if defined in the by-law, this is a more subjective term that would be extremely difficult to interpret and enforce consistently, particularly in a large municipality such as Ottawa.

## Graffiti

There are currently three by-laws dealing with graffiti in the City of Ottawa: the Fence By-law, the Property Standards By-law, and the Graffiti Management By-law. Only the Property Standards By-law describes a manner of finish, and it only applies to graffiti on exterior walls. Staff has been asked to examine the need for three by-laws addressing the same issue, and to consider adding a prescribed manner in which graffiti should be removed and refinished.

### Background

Having three separate by-laws dealing with the same issue may be confusing for both residents and enforcing officers. That the three by-laws are not consistent in terms of the manner of finish or removal of graffiti only adds to the complexity of the issue, without providing any benefit. Most other major Canadian municipalities have enacted one by-law that deals with graffiti specifically (Calgary, Edmonton, Hamilton, Vancouver, Winnipeg).

The manner of finish is also important to prescribe in a regulatory framework because it requires that the removal process meet a certain standard. This would prevent inadequate work from being completed and would set a consistent standard for all graffiti removal. Prescribing an adequate removal process may also prevent buildings or structures from being “re-tagged”.

Manner of graffiti removal, on the other hand, is not discussed in any of the by-laws of other major municipalities. This is likely due to the fact that the manner in which the graffiti should be removed may vary given the situation (i.e. type of paint used, material on which the graffiti is placed, temperature, length of time the graffiti has been on the structure).

As well, the enforcement mechanism used in relation to the Property Standards By-law allows for a 14-day appeal period to Orders, thereby creating a longer than necessary compliance due date that also conflicts with the Graffiti Management By-law’s 7-day compliance date.

The number of complaints about graffiti on private property has decreased significantly in the last couple of years, perhaps indicating that the city has been progressing well in its efforts to prevent graffiti from being placed. Complaint numbers have gone from 1583 in 2012, 1,327 in 2013, 1,261 in 2014, to 766 in 2015. This is a decrease of 42% over only two years. It should be noted that Wards 14 and 12 accounted for 58% of all graffiti-related complaints in 2015. In 2016, 474 complaints were received relating to graffiti.

## Options

### A) **Status Quo**

Currently, the manner of finish is not specifically prescribed, as all are different in each case. The current by-law does however state in s. 51(1)(3) that “patching and repairs to exterior walls shall be made with the same or visually similar material and shall blend with the adjacent material”. Additionally, s. 51(1)(4) states “appropriate measures shall be taken...to restore the surface as nearly as possible to its original condition”.

### B) **Repeal graffiti from Property Standards By-law**

The issue of graffiti is addressed by the Graffiti Maintenance By-law as well as the Fence By-law. Inclusion of the provision in the Property Standards By-law as well creates redundancy and potential confusion regarding enforcement, particularly with respect to compliance timeframes. The manner of removal is cumbersome to define as it would depend on the circumstances/condition of the material where the graffiti is placed.

## Preferred Option

Staff is recommending Option “B”, repealing graffiti from the Property Standards By-law. Enforcement should be handled solely through the Graffiti Maintenance By-law, which provides for a more timely enforcement mechanism. This option will also serve to reduce confusion about the rules.

## **End Notes**

*Building Code Act, 1992, S.O. 1992, c. 23*

*Kelowna Unsightly Premises and Visual Nuisance By-law No. 8217, 2001, ss 2 - 3.3.*

*Municipal Act, 2001, S.O. 2001, c. 25.*

*Surrey Property Maintenance and Unsightly Premises By-law No. 16393, 2007, s. 12.*