



**SUBJECT: Drainage By-Law amendments**

**TO: Committee of the Whole**

**FROM: Capital Works**

Report Number: CW-03-18

Wards Affected: All

File Numbers: 805.99.17.10

Date to Committee: April 3, 2018

Date to Council: April 23, 2018

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### **Recommendation:**

Repeal Drainage By-law 56-2007 and approve proposed Drainage By-law XX-2018 attached as Appendix A to capital works department report CW-03-18, which seeks to prohibit the obstruction of any drain or watercourse and regulate the altering, relaying or repairing of private drains.

### **Purpose:**

The purpose of this report is to repeal Drainage By-Law 56-2007 and replace it with a new drainage by-Law to ensure clarity, include drainage features, and provide the city with better regulatory abilities that are not identified in the existing by-law.

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### **Background and Discussion:**

On August 4, 2014, the City of Burlington received nearly two months of rain (191 millimeters) in approximately eight hours. The record rainfall caused significant flooding and damage in parts of the city. Roads and highways were flooded, creeks filled with debris and more than 3000 homes were flooded.

Following the storm, the city established a Flood Response Steering Committee to coordinate follow up actions on the city's storm response. This group met on a regular basis to provide directions, support and updates on the work related to the flood. This group established five (5) sub-committees to provide recommendations on flood mitigation and how to reduce potential flood risk. The Private Property and Lot Grading

sub-committee was given a task to explore opportunities for improved drainage measures and lot level grading on private properties and review the current drainage bylaw. The sub-committee was comprised of staff members from capital works and the legal department.

### **Strategy/process**

The Private Property and Lot Grading sub-committee reviewed drainage by-laws from other municipalities in Southern Ontario with the intent of using those documents as guidelines. After detailed discussions, the sub-committee identified gaps in the existing Drainage By-Law 56-2007. To ensure clarity; and to provide the City with better regulatory abilities the sub-committee recommended revising and replacing the current Drainage By-Law 56-2007.

### **Options considered**

Not applicable

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### **Financial Matters:**

Not applicable

### **Total Financial Impact**

Not applicable

### **Source of Funding**

Not applicable

### **Other Resource Impacts**

Not applicable

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### **Connections:**

With continued growth and intensification, the proposed new drainage by-law will improve our abilities to regulate and enforce approved drainage patterns and bring the private lot drainage into compliance. With the changing weather patterns and increases in high intensity rainfall events, the city has experienced an increase in localized flooding due to altered drainage features. The new by-law will help mitigate these

impacts and provide improved drainage and flood protection.

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**Public Engagement Matters:**

Not applicable

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**Conclusion:**

This report has outlined amendments to By-Law 56-2007, as recommended by the Private Property and Lot Grading sub-committee. The proposed amendments will ensure clarity for the purposes of the by-law, help enforcing the restoration of drainage features and bringing the private lot drainage into compliance.

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Respectfully submitted,

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**Appendices:**

- a. Drainage By-Law XX-2018

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

## APPENDIX "A"

### THE CORPORATION OF THE CITY OF BURLINGTON

#### BY-LAW NUMBER XX-2018

A by-law to regulate the drainage of property in the City of Burlington

WHEREAS, the City recognizes that drains are essential for the collection and conveyance of water throughout the City;

AND WHEREAS the obstruction and alteration and lack of repairs and maintenance to drains may result in damage to buildings and property;

AND WHEREAS the regulation of drains is considered essential to ensure the continued efficient conveyance of water throughout the City;

AND WHEREAS section 11 of the *Municipal Act*, S.O. 2001, c. 25 provides that a municipality may pass by-laws respecting matters within the spheres of jurisdiction set out therein, including drainage;

AND WHEREAS section 97 provides that the municipality may enter upon land at any reasonable time to inspect the discharge of any matter into a land drainage system of any person and conduct tests and remove samples for this purpose;

NOW THEREFORE the Council of the Corporation of the City of Burlington hereby enacts as follows:

### PART 1: DEFINITIONS

#### 1.1 DEFINITIONS

For the purposes of this by-law, the following definitions shall apply:

**"alter"** means to change or cause to change in character or composition, become different or modified;

**"City"** as the context requires, means "The Corporation of the City of Burlington";

**"Council"** means the Council for the City of Burlington and includes its successor;

**"Director"** means the Executive Director of Capital Works for the City of Burlington, and includes the Director's designate or successor;

**"Drain"** means a drain, sewer, ditch, swale, watercourse, culvert, pipe, sump pump discharge pipe, eavestrough downspout discharge pipe, rain water leader

and/or storm sewer and parts thereof, whose function is to carry rain, ground water, surface water or subsurface water to, from and/or through any of them, and includes accessories to these, such as manholes and/or catch basins;

**“maintain”** means to do all things necessary to keep a drain in its original, natural or enhanced condition, including the removal and clearing of any material or thing of any kind whatsoever located on or found in a drain that has the effect of impeding or preventing the efficient flow of water;

**“obstruct”** means any action or inaction that has the effect of preventing, impeding or hindering the proper functioning of a drain;

**“Owner”** means any Person who is the registered owner of the land, a lessee or occupant of the land or any Person managing or receiving the rent of the land or premises;

**“Order”** means an order issued under this by-law;

**“person”** means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, company or other entity;

**“repair”** means to restore to the original condition or as determined by the Director;

## **PART 2: BY-LAW TITLE**

- 2.1 The short title of this by-law shall be “The City of Burlington Drainage By-law”.

## **PART 3: APPLICATION OF THE BY-LAW**

- 3.1 This by-law shall apply to all drains in the City.

## **PART 4: AUTHORITY**

- 4.1 The Director is responsible for the administration and enforcement of this by-law.

## **PART 5: GENERAL PROVISIONS**

- 5.1 No Person shall alter, fill, obstruct, block or in any way interfere with a drain or cause or contribute to the obstruction of a drain or change the grading and/or the drainage pattern of the Property so as to affect the drainage of another.

- 5.2 The Owner of land upon which a drain is located shall repair and maintain the drain. The Owner shall be responsible at all times to maintain the existing and/or proposed drainage on the Owner's property without causing any undue harm or damage to neighbouring properties.
- 5.3 This by-law does not apply to lands on which construction is actively proceeding in accordance with a development application, for which grading plans have been approved by the Director of City Building or where a site alteration permit has been issued in accordance with by-law 64-2014, as amended.
- 5.4 This by-law does not apply to projects undertaken by the City or the Regional Municipality of Halton.

## **PART 6: ENFORCEMENT, REMEDIAL ACTIONS AND RECOVERY OF EXPENSES**

- 6.1 The Council may from time to time appoint officers to carry out the administrative and enforcement functions of this by-law. An officer or any person acting under his/her instructions may, at any reasonable time and without a warrant, enter and inspect any lands to which this by-law applies.
- 6.2 When the City becomes aware of a contravention of this by-law by any person, the City may make an Order in writing to the person to rectify and remedy the contravention within a certain time.
- 6.3 In the event that the Order in section 6.2 is not complied with by the person within the time stipulated in the notice, then the City may take such action as is necessary to rectify and remedy the contravention of this by-law at the expense of the person, and the City may send an invoice to the person of the expenses incurred by the City thereto. In the event of failure to pay the entire invoice amount within thirty (30) days of the date of the invoice, at the discretion of the City, the outstanding balance of the invoice may be added to the tax roll of the person's property as municipal taxes and collected in the same manner as municipal taxes.
- 6.4 The City may also recover all expenses owing under this by-law by a court action as a debt due to the City.
- 6.5 Any notices, orders or legal proceedings issued or commenced pursuant to By-law 56-2007 shall continue and be enforceable.

## **PART 7: OFFENCE**

- 7.1 Any person who contravenes any provisions of this by-law or an Order issued under this by-law is guilty of an offence.
- 7.2 Any person who obstructs a by-law enforcement officer in carrying out an inspection or who provides false or misleading information to a by-law enforcement officer is guilty of an offence.
- 7.3 Upon conviction of an offence under this by-law, a person is liable to a fine as follows:
- a) the minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000;
  - b) in the case of a continuing offence, in addition to the penalty mentioned in clause (a) above, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000; and
  - c) in the case of multiple offences, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- 7.4 Any costs payable or associated with an order of the court are in addition to, and not in substitution for, the payment of any penalty imposed by the court for the commission of an offence under this by-law or any other applicable legislation.

## **PART 8: SEVERABILITY**

- 8.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

## **PART 9: REPEAL**

- 9.1 By-law 56-2007 – a by-law to prohibit the obstruction of any drain or watercourse and regulate the altering, relaying or repairing of private drains is hereby repealed.

**PART 10: EFFECTIVE DATE**

10.1 This by-law shall come into force and take effect on enactment.

ENACTED and PASSED this        day of        , 2018.

\_\_\_\_\_ Mayor Rick Goldring,

\_\_\_\_\_ Angela Morgan, City Clerk