



SUBJECT: Changes to Lot Maintenance By-law 59-2018
TO: Community Planning, Regulation & Mobility Cttee.
FROM: Building and By-law Department

Report Number: BB-07-22

Wards Affected: All

File Numbers: 110-04-1

Date to Committee: June 7, 2022

Date to Council: June 21, 2022

Recommendation:

Approve the recommended changes to the City's existing Lot Maintenance By-law 59-2018 intended to clarify regulations related to naturalized areas, vegetative growth, temporary storage of equipment and materials, eliminate restrictions on when enforcement can occur and allow for inclusion into the City's Administrative Monetary Penalty System as detailed in building and by-law department report BB-07-22; and

Authorize the Executive Director of Legal Services and Corporation Counsel to prepare for Council approval a by-law repealing and replacing Lot Maintenance By-law 59-2018, significantly in the form attached as Appendix A to building and by-law department report BB-07-22; and

Authorize the Executive Director of Legal Services and Corporation Counsel to prepare for Council approval a by-law amending the City of Burlington Property Standards By-law 28-2009, as amended, to implement changes which eliminates duplication between the Lot Maintenance and Property Standards By-laws in the form attached as Appendix B to building and by-law report BB-07-22.

PURPOSE:

To create a new consolidated Lot Maintenance By-law which can be utilized with the City's Administrative Monetary Penalty System and has been updated to clarify common issues related to naturalized areas, vegetative growth cover, temporary

storage of equipment and materials, remove restrictions on when enforcement can occur and remove duplication between the Lot Maintenance By-law and Property Standards By-law.

Vision to Focus Alignment:

- Deliver customer centric services with a focus on efficiency and technology transformation
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Background and Discussion:

Staff recommend creating a new, consolidated version of the Lot Maintenance By-law for ease of understanding and distribution to the public. The intent of the Lot Maintenance By-law is to regulate exterior lot maintenance on private property (does include building maintenance). Recommended changes include the following:

1. Updated enforcement provision to allow the Lot Maintenance By-law to be enforced and administered under the City's Administrative Monetary Penalty System.

The City of Burlington Administrative Monetary Penalty System (AMPS) is currently limited to parking infractions within the Transportation Department. Staff are working to update the AMPS system to include other municipal by-laws (expected completion in 2023 pending financial approval). This updated Lot Maintenance By-law includes provisions that will allow staff to incorporate it into AMPS once the system is expanded.

AMPS provides benefits to both the City and ticket recipients, for example:

- Council can determine fine amounts and add administrative fees to aid in cost recovery. Currently, the Province must approve fine amounts and operational costs do not factor into the decision for the fine amount.
- Appeals processes are controlled and scheduled by the City making the process faster for ticket recipients. Current appeals can take years before they are heard or resolved as they must be scheduled at Halton's Provincial Offences Court which includes appeals for all offences in Halton Region. Under AMPS, appeals can be scheduled within weeks or months, rather than being limited by Court timing and resources.

2. Updated definition of "Naturalized Areas"

Some property owners have encountered enforcement as they mistakenly believed that their yard is considered 'naturalized' if left abandoned to grow without interference. The

definition of 'naturalized area' has been updated to clarify that 'naturalized' areas must be deliberately implemented/planted and maintained.

The installation of naturalized areas has increased as they often require less maintenance, can reduce the need for water, chemical treatments and can enhance the habitat for insects and wildlife. However, without maintenance and/or careful thought as to the types of plants/grasses used, they can become a magnet for invasive plant, insect and wildlife species.

One concern expressed by property owners is that the by-law does not apply to municipal property. There is a misconception that parts of municipal property are not maintained and left abandoned to grow (e.g. area beside roads, trails, slopes and creeks) creating a 'double standard' for maintenance. It should be noted that even the naturalized areas surrounding the City's infrastructure (i.e., roads, trails, slopes, creeks) have been deliberately seeded and are maintained to avoid invasive species which is compliant with the by-law.

3. Removal of enforcement limitation on vegetative growth (otherwise known as long grass and weeds)

Currently, the Lot Maintenance By-law restricts enforcement of 'long grass and weeds' to the period between May 1 and October 15 of each year. This would typically coincide with the time in which lawn maintenance is naturally required; however, there have been situations where long grass and weeds have been found prior to May and into November. Many of these later cases are related to boulevard maintenance. Without enforcement options, the cost to clear the growth is incurred by the City when they would have been charged to the property owner in the preceding or previous weeks.

Staff surveyed similar by-laws in surrounding municipalities and found that Burlington was the only city to have such a limit on when enforcement occurs; thus, it is recommended that the limit be removed.

4. Clarifying requirements related to areas where soil is stored, or lots cleared of vegetative growth

A provision will be added to the by-law to limit the time in which a lot can remain ungraded or without vegetative growth to 30 days unless it is part of an active construction project which has an active site alteration permit, building permit, approved by subdivision or site plan or is being actively farmed.

The intent of these changes is to provide an enforcement option for work that does not require site alteration or building permits (e.g. landscaping projects) but affect nearby properties with dust and dirt for long periods of time as projects stagnate.

5. Clarifying requirements related to the storage of tools, equipment and materials.

Staff often receive enforcement requests related to tools, equipment and construction materials (e.g. scaffold) being left on a property for long periods of time (often in an unsafe manner) without corresponding maintenance or work performed. A clause will be added to note that storage of such tools, equipment and materials is only allowed, for a period of no more than 21 days unless it is part of an ongoing active project that has a site plan or subdivision agreement, or a valid site alteration or construction permit or unless a by-law officer determines that providing additional time would be reasonable given the circumstances.

6. Parking of Operable Vehicles on Front or Side Yards

A provision has been added to specifically address vehicles parked on lawns. While the existing by-law does have provisions related to parking derelict or inoperable vehicles on a front or side yard, it did not address operable vehicles.

Currently, operable vehicles parked on lawns require the use of the Zoning By-law and its definition of parking area for enforcement. This is problematic in situations where owners do not comply with enforcement as the Zoning By-law does not provide legal authority to remedy the situation. Adding this clause to the Lot Maintenance By-law will allow staff to tow the vehicles should owners fail to comply.

7. Removal of Overlap with Property Standards By-law

Minor changes will be made to ensure that there is a clear distinction between the Lot Maintenance (regulates exterior lot maintenance) and Property Standards By-laws (regulates maintenance of buildings). The by-laws are often confused but both have different legal requirements. The Property Standards By-law is based on the *Building Code Act* (vs. *Municipal Act*) and includes a separate appeals process (i.e., appeal to a Property Standards Committee). Unlike the Lot Maintenance By-law, it cannot be included in the future Administrative Monetary Penalty Process.

In order to ensure the appeals process meets legal requirements, it is important to distinguish the differences in the law so that there is no challenge during the prosecution stage. Currently, there are minor overlaps between the two by-laws that need to be rectified.

Financial Matters:

Not Applicable.

Climate Implications

Not Applicable.

Engagement Matters:

Experts in landscape architecture were consulted in developing the definition of 'naturalized areas'.

The proposed changes to the Lot Maintenance By-law will clarify regulations related to naturalized areas, vegetative growth, temporary storage of equipment and materials, eliminate restrictions as to when enforcement can occur and allow for future inclusion into the City's Administrative Monetary Penalty System.

Respectfully submitted,

Kerry Davren

Manager of By-law

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Appendices:

- A. Draft Lot Maintenance By-law to replace By-law 59-2018
- B. Draft Amendments to Property Standards By-law 28-2009

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.