

REPORT

Council

Meeting Date: March 28, 2022

FROM: Municipal Enforcement Services Department

DATE: March 22, 2022

SUBJECT: Housekeeping by-laws to amend Administrative Penalties for Non-Parking Violations and Orders, the Property Standards, Appeals Committee and delegated authorities By-laws: By-law 2022-031, By-law 2022-032 and By-law-2022-036

LOCATION:

WARD: Town-wide

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RECOMMENDATION:

1. That By-law 2022-031, a by-law to amend Administrative Penalties for Non-Parking Violations and Orders By-law 2021-038 as set out in Appendix A to the report from the Municipal Enforcement Services Department dated March 22, 2022, be passed; and
2. That By-law 2022-032, a by-law to Amend Property Standards By-law 2017-007 as set out in Appendix B to the report from the Municipal Enforcement Services Department dated March 22, 2022; and
3. That By-law 2022-036 a by-law to amend By-law 2010-163 being a by-law to delegate certain powers to the Oakville Appeals Committee and to amend By-law 2021-077 being a by-law to delegate certain powers and duties under *the Municipal Act, 2001, S.O. 2001 c.25, the Planning Act, R.S.O. 1990 c. P. 13*, and other Acts be passed.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Administrative Penalties for Non-Parking Violations and Orders By-law 2021-038 (the “APS By-law”) provides for a comprehensive system of administrative penalties issued under the *Municipal Act, 2001*
- The APS By-law regulates the issuance and service of penalty notices and orders for non-parking matters for several town by-laws

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- The town has designated the by-laws to which the APS By-law applies
 - Amendments to the APS By-law and minor housekeeping amendments to the designated by-laws are set out in Appendix A to this report
 - Fireworks Discharge By-law 2009-056 and Public Nuisance By-law 2007-143 are added to the list of designated by-laws, thereby allowing for the use of orders and administrative penalties for enforcement, including escalating order fees and penalties
 - Property Standards By-law 2017-007 is being amended as set out in Appendix B to this report to include provisions for a system of administrative penalties under the *Building Code Act, 1992*, and includes escalating order fees and penalties
 - By-law 2010-163, a by-law to delegate certain powers to the Oakville Appeals Committee (Appeals Committee By-law), is being amended by By-law 2022-036 to include the delegation of appeals to the Appeals Committee relating to the Sign By-law, the Fence By-law, the Noise By-law and the Public Nuisance By-law.
 - By-law 2021-077, a by-law to delegate certain powers and duties under the Municipal Act, 2001, S.O. 2001 c.25, the Planning Act, R.S.O. 1990 c. P. 13, and other Acts (Delegation By-law), is being amended by By-law 2022-036 to add the delegation of appeals under the Noise By-law and the Public Nuisance By-law

BACKGROUND:

On February 22, 2021, Council approved the system of escalating penalties and order fees through the APS By-law. The APS By-law provides enhanced options to increase the effectiveness of the progressive enforcement methodology, which is based on seeking ongoing compliance by employing reasonably escalating tools of enforcement over time such as the issuance of penalties and fees, while maintaining an individual's right to request a review of the penalty. Currently, there are several by-laws ("regulatory by-laws") that provide for penalties to be issued under the APS By-law. The *Municipal Act, 2001* provides that penalties created by the town cannot be punitive, which limits the overall value of any one penalty to \$500. It should also be noted that, as a final step in progressive enforcement, staff have the ability to take a violator to court by issuing a summons under the Provincial Offences Act. This process takes significantly longer than the issuance of administrative penalties and order fees, but can result in more significant fines – specifically if a pattern of non-compliance, in the face of progressive enforcement, can be shown.

The issuance of penalty notices require that the person contravening the regulatory by-law pay an administrative penalty. The issuance of orders provide documented information to the person such as the nature of the contravention, ways to remedy

the contravention and timelines under which to comply. The APS By-law regulates the issuance and service of penalty notices and orders under designated by-laws under the *Municipal Act, 2001*.

The Property Standards By-law does not currently provide for a system of administrative penalties. However, the *Building Code Act, 1992* does permit municipalities to use administrative penalties to enforce property standards by-laws and, with this, regulations for the issuance of administrative penalties. The ability to issue escalating order fees and penalties has been included in proposed amending By-law 2022-032.

The Appeals Committee By-law delegates certain powers and duties to the Oakville Appeals Committee. Delegation By-law 2021-077 consolidates delegations of authority by Council to officers, employees or committees.

COMMENT/OPTIONS:

APS By-law Amendment

The Fireworks Discharge By-law 2009-056 and the Public Nuisance By-law 2007-143 do not currently provide for a system of administrative penalties. Amending By-law 2022-031 adds these by-laws to the list of designated by-laws under the APS By-law; thereby enabling Officers to enforce regulations using administrative penalties, including the ability to deploy escalating penalties in such instances where the same person is found in contravention of the same violation within a 24 month period.

Both the Fireworks Discharge By-law and the Public Nuisance By-law, which do not currently provide for order issuance, will see this process added under amending By-law 2022-031. With the approval of By-law 2022-031, Officers will be able to use the order process as a tool to gain compliance and a means to provide documented information to the resident such as the nature of the violation, ways to remedy and timelines under which to comply. As well, language regarding the service of penalty notices, orders and other notices has been added to these by-laws.

The Public Nuisance By-law currently provides for the issuance of an exemption to the requirements of the by-law in certain circumstances. A person who is denied an exemption may appeal to Council. Staff is proposing that these appeals be heard by the Appeals Committee rather than by Council. The review of appeals by the Appeals Committee is consistent with appeals of similar matters such as denials of noise exemption requests, suspension of business licences and animal control violations.

The following minor housekeeping amendments are proposed for the APS By-law:

- listing the designated by-laws that the APS By-law applies to;
- amending the definition of “Order” and “Appear”;
- amending the language respecting the service of penalty notices and orders, including the use of a courier to provide service of same;
- clarifying that the Town may invoice a person to recover unpaid administrative penalties and other outstanding costs in addition to recovery by collection, action or by adding the costs to the tax roll. Language is also added to explain that the amount of outstanding costs constitute a lien on the property upon registration of a notice of lien in the Registry Office;
- adding language to each designated by-law to confirm that a person may request a review of a penalty notice in accordance with the provisions of the APS By-law;
- adding language to the Licensing By-law, Tow Truck Licensing By-law, Short-term Accommodation By-law and Transportation Network Company By-law regarding collection of unpaid fines for contravention of these business licensing by-laws; and
- adding language to the Lot Maintenance By-law and Sign By-law directing persons to the APS By-law for regulations on remedial action.

Property Standards By-law

Progressive enforcement is based on seeking ongoing compliance by employing reasonably escalating tools of enforcement over time – including the issuance of administrative penalties and fees. The *Building Code Act, 1992* allows municipalities to use administrative penalties to enforce property standards by-laws. The Town’s Property Standards By-law does not currently provide for the issuance of administrative penalties and only provides for enforcement under the Provincial Offences Act; resulting in the use of the courts to prosecute persons who fail to comply with the By-law.

By introducing administrative penalties into the Property Standards By-law, Officers will have the opportunity to use progressive enforcement as it relates to the frequency of the same violation. Administrative penalties offer another resource to the Officers to issue charges based on the offence. By-law 2022-032 amends the Property Standards By-law to include a system of administrative penalties and makes minor housekeeping amendments to existing regulations. A redline copy of these amendments is available in Appendix C.

Property Standards By-law and escalating orders and penalties

Similar to the system of escalating penalties and orders introduced in the APS By-law, amending By-law 2022-032 amends the Property Standards By-law to provide for the escalation of administrative penalties and orders with the progression of increased penalties or order fees to be applied for contraventions of the same

provision of a regulatory by-law within a 24 month period. If the contravention relates to a property, the owner of the property must not change in order to allow for the administrative penalty to be escalated.

The escalated administrative penalty and order fees below are consistent with those applied in the designated by-laws under the *Municipal Act, 2001*.

Administrative Penalties		ORDERS	
First Violation	\$300	First Order	\$0
Second Violation	\$400	Second Order	\$100
Third Violation	\$500	Third Order	\$250
Subsequent Violation	\$500	Fourth Order	\$500
-	-	Subsequent Order	\$500

The above chart provides examples of how progressive enforcement can work. Not all cases will result in a fee and/or penalty. Officers will continue to use judgement and follow progressive enforcement guidelines when dealing with individual investigations.

The ability of Officers to issue an administrative penalty under the Property Standards By-law, rather than relying solely on the courts, will streamline the processing of by-law infractions. This will be the first step in progressive enforcement, which is based on seeking ongoing compliance by employing reasonably escalating tools of enforcement over time such as the issuance of penalties and fees, while maintaining an individual's right to request a review of the penalty.

The Appeals Committee By-law and the Delegation By-law

The Appeals Committee By-law sets out the powers and duties the Appeals Committee has to hear and determine appeals regarding:

- the muzzling of dogs under the Animal Control By-law;
- appeals filed regarding business licenses;
- complaints received under section 20 of the Development Charges Act, 1997;
- complaints received under section 257.85 of the Education Act relating to education development charges;
- the issuance of tree permits under the Private Tree By-law;
- appeals filed regarding the rules and regulations for cemeteries under the Cemetery By-law; and
- additional appeals and complaints as may be determined by Council

The Delegation By-law consolidates similar authority that has been delegated by Council to various officers, employees and committees, including the Appeals Committee.

Housekeeping amendments are proposed to the Appeals Committee By-law to align with the Delegation By-law with the addition of authority to hear appeals under the Sign By-law and the Fence By-law. Amendments are proposed to both the Delegation By-law and the Appeals Committee By-law to add delegation of appeals regarding the issuance of permits under the Noise By-law and the Public Nuisance By-law. These amendments are included in Amending By-law 2022-036 attached as Appendix D.

Conclusion

Through the introduction of a system of administrative penalties and order processes to the Discharge of Fireworks By-law, Nuisance By-law and Property Standards By-law will improve customer service by ensuring consistency with respect to process and provides swift access to the dispute process with the screening and hearing process being managed through town legal staff. The ability to deploy escalating administrative penalties and order fees assists with progressive enforcement based on seeking ongoing compliance by employing reasonably escalating tools of enforcement over time.

The proposed housekeeping amendments to the Appeals Committee By-law and the Delegation By-law will ensure that both by-laws include current delegations of authority to the Appeals Committee made by Council.

CONSIDERATIONS:

(A) PUBLIC

The administrative penalty system of enforcement for the Property Standards By-law, the Firework Discharge By-law and the Public Nuisance By-law allows for the processing of by-law penalties outside of the courts, thereby providing the Town and the public with a timely local dispute resolution system.

(B) FINANCIAL

Requests for screening and hearing reviews under new administrative penalty provisions in the Property Standards By-law, the Firework Discharge By-law and the Public Nuisance By-law should be able to be accommodated with existing legal resources and reduces the requirement for provincial court resources.

Revenue may increase if the necessity exists for escalating penalties and/or order fees are required to be issued.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Municipal Enforcement Services and Legal have been involved in the review process.

(D) CORPORATE STRATEGIC GOALS

This report addresses the corporate strategic goal(s) to:

- Continuously improve our programs and services
- Provide outstanding service to our residents and businesses

(E) CLIMATE CHANGE/ACTION

N/A

APPENDICES:

Appendix A – By-law 2022-031 a By-law to Amend Administrative Penalties for Non-Parking Violations and Orders By-law 2021-038

Appendix B – By-law 2022-032-a By-law to Amend Property Standards By-law 2017-007

Appendix C – Redline version of Property Standards By-law 2017-007

Appendix D – By-law 2022-036 a By-law to amend By-law 2010-163 being a by-law to delegate certain powers to the Oakville Appeals Committee and to amend By-law 2021-077 being a by-law to delegate certain powers and duties under the Municipal Act, 2001, S.O. 2001 c.25, the Planning Act, R.S.O. 1990 c. P. 13, and other Acts

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