

# Committee of the Whole (1) Report

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**DATE:** Tuesday, March 1, 2022

**WARD(S):** ALL

**TITLE:** WATER BY-LAW UPDATE

**FROM:**

Zoran Postic, Deputy City Manager, Public Works

**ACTION:** DECISION

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## **Purpose**

To request approval to amend the City's Water By-law (By-law No. 177-2016, as amended). The proposed amendments will enhance the Water By-law by adding clarity to various definitions, increasing alignment with the Backflow Prevention By-law (By-law No. 177-2020), strengthening the administration of fair and equitable penalties for Water By-law infractions, and introducing improvements for capturing non-revenue water.

## **Report Highlights**

- The City's Water By-Law must be routinely reviewed and updated as the City's Drinking Water System and its oversight evolve in response to community growth, ageing infrastructure improvements, conservation efforts, legislated requirements, and business process efficiencies.
- The proposed amendments to the Water By-law are intended to enhance the clarity and specificity of the Water By-law, facilitate alignment with the Backflow Prevention By-law, and include provisions for Administrative Monetary Penalties.

## **Recommendations**

1. That Council authorize amendments to the Water By-law in accordance with Attachment 1 and Attachment 2; and
2. That staff be authorized to undertake any other actions required to implement the recommendations of this Report, including any amendments to other By-laws, as a result of the amendment to the Water By-law.

## **Background**

**Municipal by-laws are intended to complement and support the Provincial regulation of Drinking Water Systems with consideration of City-specific context and needs.**

Drinking water and Drinking Water Systems are regulated by the Province through the Ministry of the Environment, Conservation and Parks (MECP).

The *Safe Drinking Water Act, 2002 (the Act)* recognizes that the people of Ontario are entitled to expect their drinking water to be safe. *The Act* also provides for the protection of human health and the prevention of drinking water health hazards through the control and regulation of Drinking Water Systems and drinking water testing. *The Act* mandates Owners of municipal Drinking Water Systems to follow specific operation and maintenance requirements which broadly encompass management, sampling, testing, certification of Operators, water quantity, and water quality.

Sections 8, 9, and 10 of the *Municipal Act, 2001* authorize a municipality to pass by-laws that are necessary or desirable for municipal purposes and, in particular, related to economic, social, and environmental well-being of the municipality; health, safety, and well-being of persons; services and things that the municipality is authorized to provide; and protection of persons and property. Additionally, Section 391 of the *Municipal Act, 2001* provides that a municipality may pass by-laws imposing fees or charges on persons for services or activities provided or done by, or on behalf of, the municipality and that the costs included in a fee or charge may include costs incurred by the municipality related to administration, enforcement, and the establishment, acquisition, and/or replacement of assets.

**The City's Water By-law was first enacted in the 1970s and has been reviewed and amended over time to ensure it has evolved in response to community growth, ageing infrastructure improvements, conservation efforts, legislated requirements, and business process efficiencies.**

The City's Water By-law was first enacted in 1973 and was most recently amended in 2016. The Water By-law defines the roles and responsibilities of both property owners and the City to improve operational efficiency and protect the integrity of the Drinking Water System. The Water By-law regulates private water connections to the City's Drinking Water System, establishes an effective method to measure and charge for water consumption, encourages water conservation, prohibits practices and other actions that put the integrity of the City's Drinking Water System at risk, and defines a system of recourse and penalties for the purpose of enforcing the Water By-law.

Fair and equitable administration of the Water By-law has been prioritized since its enactment with a focus on business process improvements which have been further enhanced with the addition of dedicated Water and Wastewater By-law Enforcement Officers and Backflow Prevention staff. The proposed amendments to the Water By-law are intended to enhance the clarity and specificity of the Water By-law, facilitate alignment with the Backflow Prevention By-law, and include provisions for Administrative Monetary Penalties.

**Opportunities to improve the City's Water By-law were identified since the most recent Water By-law amendment in 2016 which serve to clarify requirements and ensure the Water By-law is administered fairly and equitably.**

The proposed Water By-law amendments clarify requirements for property owners and enforcement while providing flexibility to ensure the appropriate level of protection is achieved to ensure the safety of the municipal Drinking Water System.

The proposed amendments to the City's Water By-law are considered to have minor impact with respect to the applicability and general context of the By-law but serve to address the identified opportunities for improvement. Each of the proposed changes are identified in Attachment 1 with some of the more significant proposed changes detailed herein.

**Enforcement of the City's Water By-law is governed by the *Provincial Offences Act*, R.S.O. 1990, c. P.33 however, the proposed amendments bring the Water By-law in alignment with the City's enforcement capabilities through Administrative Monetary Penalties (AMPs) to expedite the enforcement process.**

When an individual violates a provincial statute or municipal by-law, the current system treats the violation as an "offence" to be prosecuted under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. This process often mirrors the criminal trial process, which is designed to emphasize the seriousness of an offence.

AMPs are a civil mechanism for enforcing compliance with regulatory requirements. They are an effective, quick, clear, and tangible way for regulators and Enforcement Officers to respond to infractions of the law and by-laws. In practice, a monetary penalty is assessed and imposed in the form of a notice with a prescribed date and time for payment. While monetary penalties do not lead to convictions or pose a risk of imprisonment, administrative decisions may still be made.

With Enforcement Officers now in place to enforce water and wastewater compliance, there is opportunity to expedite the realization of fines through the AMP system. The structure of the AMP system grants further flexibility for Enforcement Officers to either proceed and take punitive action through the court system or process by-law infractions through an administrative penalty. Where a property owner is not in compliance with required regulations and standards and/or found to be in contravention of the Water By-law, they will be assessed a penalty which will be based on the type, severity and frequency of the contravention.

**The proposed Water By-law amendments are also intended to bring the Water By-law in alignment with the Backflow Prevention By-law to strengthen the City's ability to control sources of water entering the Drinking Water System.**

Council first enacted a Backflow Prevention By-law in 2017. The Backflow Prevention By-law was focused on properties that pose the greatest risk to the system, including existing and new construction of industrial, commercial and institutional properties as well as mixed-use and multi-residential properties. Preventing water from flowing into the drinking water system from these sources helps to ensure safe drinking water.

The Backflow Prevention By-law addressed the type, installation and field testing of backflow prevention devices which align with current Canadian Standards Association (CSA-B64) and American Water Works Association Standards.

The Backflow Prevention By-law was amended in 2020 after staff identified opportunities for improvement to clarify program requirements and ensure the program was administered fairly and consistently. The proposed amendments clarified requirements for property owners and enforcement and provided flexibility to ensure the level of required protection corresponds appropriately with the level of risk that a property poses to the drinking water system.

Given that the Backflow Prevention By-law was enacted following the previous Water By-law amendment, there is a need for the Water By-law to reference the Backflow Prevention By-law to ensure residents are aware of newer requirements under the Backflow Prevention By-law.

**Sources of non-revenue water can be reduced through the proposed amendments to the Water By-law by strengthening the specifications for access points and/or devices that interact with the City's Water Distribution System such as water meters, by-pass connections, and meter reading devices.**

Non-revenue water is defined as water that is not billable to the end user and is comprised of losses (such as customer metering inaccuracies, unauthorized consumption/water theft, data handling errors, and true water system leakage) and unbilled authorized consumption (such as usage of water for infrastructure operation and maintenance, flushing, and emergency services, such as fire flow).

The City has developed and implemented a number of programs and initiatives to reduce sources of non-revenue water such as the water meter replacement program, leak detection, replacement of ageing ductile iron infrastructure, implementation of District Metering Areas, proactive maintenance, and improved data tracking. Enhancing specifications for water meter installations, by-pass connections, and meter reading devices through the proposed amendments to the Water By-law better positions the City to successfully capture correct water billing data thereby reducing the occurrence of non-revenue water.

### **Previous Reports/Authority**

[Water By-law Update, November 7, 2016](#)

### **Analysis and Options**

**Many Ontario Municipalities have developed and updated water-related by-laws over time to protect the integrity of their municipal Drinking Water Systems by regulating System connections and ensuring suitable enforcement mechanisms are in place.**

As part of the Water By-law review process, water by-laws from the following municipalities were used for comparison purposes, and in some cases as guidance, in the development of the City's proposed Water By-law amendments:

- City of Barrie
- City of Markham
- Region of York
- City of Toronto

**Internal stakeholders were consulted through the Water By-law review process to ensure the proposed Water By-law amendments align with the City's existing systems and processes.**

Staff from By-Law and Compliance, Licensing and Permit Services, Corporate and Strategic Communications, Legal Services, Development Engineering, and Building Standards were consulted on the proposed amendments.

Stakeholders will be informed of amendments to the Water By-law through various means, such as:

- The City's website;
- Social media messaging; and
- Communication with property owners in response to service inquiries.

Staff have included a list of recommended changes and associated impacts in Attachment 2.

### **Financial Impact**

The financial impact of incorporating the proposed amendments to the Water By-law is anticipated to be minimal and can be accommodated within the existing staff compliment.

### **Broader Regional Impacts/Considerations**

There are no regional implications as a result of the proposed amendments to the Water By-law.

### **Conclusion**

The proposed amendments to the Water By-law will enhance the City's ability to measure and charge for water consumption, encourage water conservation, prohibit practices and other actions that put the integrity of the City's Drinking Water System at risk, and define a system of recourse and penalties for the purpose of enforcing the Water By-law. This supports Council's responsibility, as the Owner of the City's Drinking Water System, to ensure safe drinking water is provided to the City's residents and businesses.

**For more information**, please contact: Emilie Alderman, Acting Director, Environmental Services, ext. 6102.

### **Attachments**

1. Proposed Amendments.
2. Recommended Change and Associated Impact.

### **Prepared by**

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**Approved by**



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