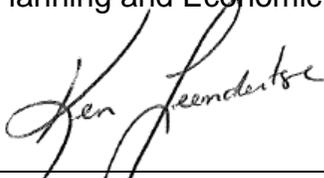




**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Licensing and By-law Services Division**  
**and**  
**CORPORATE SERVICES DEPARTMENT**  
**Financial Planning, Administration and Policy Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	August 11, 2020
<b>SUBJECT/REPORT NO:</b>	Amendments to Property Standards By-law 10-221 to Include Private Water Service Line Requirements (PED20121/FCS20060) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Robert Ustrzycki (905) 546-2424 Ext. 4721 John Savoia (905) 546-2424 Ext. 7298
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department 
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department 

**RECOMMENDATIONS**

- (a) That the changes to the City of Hamilton Property Standards By-law 10-221 regarding the maintenance requirements for private water service lines as described in Report PED20121/FCS20060, detailed in the proposed amending by-law attached as Appendix "A" to Report PED20121/FCS20060 be approved;
- (b) That the amending by-law attached as Appendix "A" to Report PED20121/FCS20060, which has been prepared in a form satisfactory to the City Solicitor be enacted by Council.

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

## **EXECUTIVE SUMMARY**

At its meeting of November 27/28, 2019, Council directed staff to report back regarding the feasibility of the implementation of a by-law to impose the obligation of property owners to replace the private portion of lead water service lines where the public portion of a lead water service line replacement has occurred or is to be replaced.

The Property Standards By-law 10-221 (By-law) sets minimum standards to ensure that property owners maintain their properties. These standards are put in place to protect the health and safety of those that reside on the property as well as the general public. Property Standards address the physical building and the land around the property.

By-law amendments are occasionally required to improve enforcement activities and update various by-laws as part of continuous improvement efforts for the most efficient and effective by-laws. Report PED20121/FCS20060 recommends amending the City's By-law:

- to require a property owner to replace the private portion of lead water service lines where the public portion of a lead water service line replacement has occurred or is to be replaced; and,
- to require a property owner to repair or replace a private water service line that is in a state of disrepair that it leaks.

**Alternatives for Consideration** – Not Applicable

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial/Staffing: The cost of the proposed amending by-law (attached as Appendix “A” to this Report) would not have an impact on current Licensing and By-law Services (LBS) resources or change the annual operating budget. However, it is important to note that the staffing and cost estimates to enforce the replacement of the private portion of a lead water service line is difficult to project for how often this enforcement may be required.

The financial strategy is to recover enforcement costs imposing Fees for Service, predicated on the principle that Public Works staff will educate the property owner and front-end discussions prior to any LBS action. Enforcement would be guided by Public Works staff on a case by case basis, and not steered by public complaint. Costs for

registering/discharging Orders on Title are recovered through the User Fees and Charges By-law when a property is sold.

Legal: The Property Standards By-law offers a simple and straightforward mechanism to adopt a lead-free standard for water service supply for lands in the City and to clarify the maintenance obligation for water service supply lines on private lands. This approach dovetails with existing enforcement and administrative practices and procedures.

## **HISTORICAL BACKGROUND**

Based on best available information, it is estimated that the City of Hamilton has approximately 20,000 households with potential lead exposure associated with water services. While staff cannot identify the distribution of this figure by geographic boundary, it can be assumed that homes built prior to the mid-1950s may be impacted by some level of risk, assuming the service lines and plumbing have not been replaced to date.

Lead can pose various health risks depending on the level of exposure. The objective of public health authorities is to reduce as much as possible the level of lead exposure for the entire population, and more particularly for young children (6 years old and younger), pregnant women, and infants fed with powdered or concentrate formula mixed with water.

The City has relied on lead service water line replacement as its main option to reduce the amount of lead in tap water as required by the *Safe Drinking Water Act, 2002*. The Ministry of the Environment, Conservation and Parks (MECP) guidelines indicate that the process in which the lead service is replaced may have direct influence over the concentration of lead migrating into drinking water. A partial replacement of a lead service line (e.g. only the private side or public side of service is replaced) has the potential to increase lead concentrations via the following mechanisms:

- Construction activities can dislodge lead particles that can enter the drinking water; and,
- Connecting a lead service line to a new copper line may result in an electrochemical process between the two metals that can dissolve lead particles into the drinking water.

Hamilton Water's service line replacement process, under the substandard water service replacement program, begins with replacement of the private portion of the lead water service line by the property owner, followed by replacement of the public portion

by the City. However, the replacement sequence differs when the City replaces water mains and simultaneously replaces the public portion of the water service lines. Where the replaced public portion was comprised of lead there is no assurance that the property owner will replace the private portion of the lead service. If the property owner chooses not to replace the private portion of the lead service, they may be subject to long-term health risks associated with dissolved lead in their drinking water resulting from the partial replacement.

To avoid partial replacements, Council has approved a motion that directs staff to report back regarding the feasibility of the implementation of a by-law to impose the obligation to replace the private portion of lead water service lines where the public portion of a lead water service line replacement has occurred or is to be replaced.

Hamilton Water has noted instances in the past, where a private water service line is in a state of disrepair so that it leaks water but has faced challenges with the property owner to have the water line repaired or replaced in a timely fashion. Amending the By-law to require a property owner to repair or replace a private water service line that is in a state of disrepair so that it leaks will greatly improve efforts to ensure the integrity of the City's water distribution system inclusive of private water service lines.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The *Building Code Act, 1992* allows municipalities to pass a by-law to prescribe standards for the maintenance and occupancy of property.

## **RELEVANT CONSULTATION**

Public Works, Hamilton Water and Legal Services was consulted in the preparation of this Report and the draft amending by-law attached as Appendix "A".

## **ANALYSIS AND RATIONALE FOR RECOMMENDATIONS**

The By-law sets minimum standards to ensure that property owners maintain their properties. These standards are put in place to protect the health and safety of those that reside on the property as well as the general public. Amending the By-law to require the repair of leaking private water service lines or the replacement of the private portion of a lead water service line where the public portion of a lead water service line replacement has occurred or will occur soon, is consistent with the By-law's purpose. This approach provides a fair and comprehensive appeal process to effectively address the replacement of a private portion of a lead water service line or to require the repair or replacement of a water service line that is in a state of disrepair.

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

Section 15.2 of the *Building Code Act* provides authority to Municipal Law Enforcement Officers (MLEO) to issue Orders requiring compliance for all aspects of the property's interior and exterior features that are non-compliant with the By-law. If the property owner does not comply with the Order, the MLE Officer can use various tools to resolve the violation which may include:

- a fee for inspection cost that would be added to the property taxes;
- registering the Order on title;
- tickets or court action; and,
- sending out a contractor to complete the required work with the costs added to the property taxes as a priority lien.

It is contemplated that MLE, when notified by Hamilton Water, will enforce the replacement of a private portion of a lead water service line or to require the repair or replacement of a water service line so that it would no longer leak. This action would occur following outreach by Hamilton Water to affected property owners who do not comply within a reasonable timeframe.

The use of enforcement tools by the MLEO may vary on a case by case basis, with the objective to obtain compliance. For example, Orders may be registered on title and are assumed by any subsequent owner, who may require resolution of an Order by the selling property owner prior to the house closing date. Registering Orders on property title provides assurance that removal of the private portion of a lead water service lien will occur when the property is sold. This action may be preferable in situations where the current owner is a senior who declines to replace the lead water service line due to financial hardship and/or as the only occupant of the property is not concerned about the health risks associated with lead exposure. Similarly, in the case of a leaking private water service line, water service disconnection may be the preferred compliance tool where an Order has not been complied within a reasonable timeframe.

Failure to comply with an Order is an offence pursuant to paragraph 36(1)(b) of the *Building Code Act, 1992* which may result in a fine of up to \$50K for a first offence and \$100K for a subsequent offence for an individual; up to \$500K for a first offence and \$1.5M for a subsequent offence for a corporation. In extreme cases, where non-compliance continues despite the issuance of a final and binding property standards order, the City may undertake the required repair or replacement of the private water service line with all costs added to the tax roll as a priority lien and collected in a like manner as property taxes.

## **Financial Assistance for Property Owners to Replace Private Lead Water Service Lines**

The City's Lead Water Service Replacement Loan Program (Program) has been offered since October 2007 with the purpose to provide eligible homeowners with the opportunity to access funding, through an interest-bearing loan from the City, to assist homeowners to reduce their potential risk of exposure to lead in tap water that could be coming from their private lead water service line.

In May 2020, the Program was amended to provide access to zero interest loans for eligible low-income residential property owners (for details refer to Report FCS19025(a), approved at May 13, 2020 Council as Item 5.4.(a)). Zero-interest loans will be granted to property owners of owner-occupied dwellings who have qualified for low-income energy customer programs such as the Low-Income Energy Assistance Program or the Ontario Electricity Support Program.

The current Program provides loans only to owner-occupied homes specifically and not to residential rental properties. There are bonusing provisions within section 106 of the *Municipal Act, 2001* whereby a municipality shall not assist directly or indirectly with any commercial enterprise by, giving or lending any property of the municipality, including money. However, section 28 of the *Planning Act* allows municipalities, to designate, by by-law, a Community Improvement Plan (CIP) that authorizes municipalities to provide grants or loans to commercial enterprises for a defined variety of rejuvenation/ rehabilitation purposes, without contravening the *Municipal Act, 2001* prohibition against bonusing.

The 2020 Water and Wastewater Infrastructure Support Community Improvement Project Area and Plan (PED20120/FCS20055/PW20047) report recommends the adoption of a Water and Wastewater Infrastructure Support CIP that incorporates the Program so that loans can be expanded to residential rental properties. Providing access to the Program for residential landlords will support the replacement of more private portion lead water service lines and provide healthier drinking water conditions for tenants of these rental properties.

The Program enhancements are expected to aid with enforcement efforts to have lead water service lines replaced.

## **ALTERNATIVES FOR CONSIDERATION**

N/A

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Healthy and Safe Communities**

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

### **Clean and Green**

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

### **People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A”: Draft amending by-law