



CITY OF HAMILTON

**PUBLIC WORKS DEPARTMENT
Operations Division**

TO: Chair and Members Public Works Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: January 16, 2013	
SUBJECT/REPORT NO: Appointment of a Drainage Superintendent for the City of Hamilton Pursuant to The Drainage Act R.S.O. 1990 (TOE02091a) - (City Wide)	
SUBMITTED BY: Gerry Davis, CMA General Manager Public Works Department	PREPARED BY: Darrell Smith (905) 546-2424, Extension 7646
SIGNATURE:	

RECOMMENDATION

That a By-law appointing Wayne Song as the Drainage Superintendent for the City of Hamilton, in the form outlined in Appendix A to Report TOE02091a, be passed and enacted.

EXECUTIVE SUMMARY

The City of Hamilton is responsible for Municipal Drains as defined by The Drainage Act. In order to fund, inspect, maintain and receive grant monies from the Province, the City is responsible for the appointment and assignment of a Drainage Superintendent. Wayne Song, the Drainage and Stormwater Project Manager in the Operations Division, has successfully completed the required training, and is qualified to serve as the City's Drainage Superintendent. The necessary appointing By-law is attached as Appendix A to Report TOE0902091a.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial:

The appointment of an approved Drainage Superintendent will enable the City to obtain as much as 33 1/3% of the assessment eligible for grants on maintenance and repair

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works carried out under the Drainage Act. As well as 50% of the costs incurred by the City in the employment of a Drainage Superintendent may be grantable, but only when performing the duties and responsibilities of the Drainage Superintendent. Grant monies from the Ministry, are only available to those municipalities who have appointed, by By-law, a Drainage Superintendent and who has also been approved by the Ontario Ministry of Agriculture and Food.

The demand for new or maintenance of the existing municipal drains varies from year to year and recently there has been no activity in this area.

Staffing:

As a requirement of the position of the Drainage Project Manager, the incumbent must have or be able to obtain OMARA Drainage Superintendent Certification and act, at the will of Council, as the Drainage Superintendent for the City of Hamilton.

Wayne Song is the current Project Manager in the Drainage portfolio and has successfully completed the required provincial training through the Ontario Ministry of Agriculture, Food and Rural Affairs establishing his qualifications to serve as the City's Drainage Superintendent. An appointment by By-law, as the City's Drainage Superintendent is a prerequisite to his registration with the Ontario Ministry of Agriculture, Food and Rural Affairs as the City's Drainage Superintendent.

Legal:

Drainage Act

As common law does not provide a means for drainage outlet except for riparian landowners (one whose land is in actual contact with a watercourse), the Drainage Act was introduced to provide non-riparian landowners, with a method of obtaining outlet drainage. The Drainage Act provides a procedure or mechanism whereby landowners can overcome the obstacles of the common law and obtain solutions to their drainage problems. The Drainage Superintendent has a responsibility to provide the information about the Drainage Act; the procedures involved, and then follow up with the necessary maintenance programs on behalf of all the owners on the drain. The Drainage Act is a Provincial statute that gives the authority to the municipality to carry out procedures of the Act. Councils act as the "facilitator" in carrying out the procedures while the role of the Drainage Superintendent is to initiate, supervise and assist in the maintenance, repair, construction and/or improvement of drains created under the Act.

Perpetual Care Obligations

Any drain constructed under a By-law passed under the Drainage Act is the responsibility of the municipality to maintain and repair. Section 94 of the Drainage Act requires the Drainage Superintendent to inspect every drainage works for which the municipality is responsible. The Drainage Superintendent is obliged to report periodically to Council on the condition of the drain.

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Limits of Responsibility

Once appointed to the role of Drainage Superintendent, Mr. Song's responsibilities will remain the same within the department. His authority beyond the road allowance remains the same unless he is involved with the investigation of an existing or potential municipal drain. The latter of which is only initiated when the Drainage Superintendent has been invited by a landowner to inspect or discuss the Drainage Act or any remedial action.

Mr. Song has no authority to intercede with civil drainage matters other than to offer advice and give witness if legal action is undertaken by one of the parties.

HISTORICAL BACKGROUND

Municipal Drains

The Drainage Act of Ontario contains several mechanisms whereby landowners may make drainage improvements to their lands undertaken and the costs shared among the benefiting landowners. The drains are referred to as Municipal Drains because the municipality is required to administrate the petitions, approvals, carryout the work and establish the cost sharing arrangements for the local landowners. The perpetual care obligation for the drains remains the responsibility of the municipality to organize the work, but the cost plus administration are charged back to the benefiting landowners.

The municipality does not own the drain or the land they are constructed upon unless they are built upon a road allowance or other City property. The drains tend to be named after the original petitioner such as the "Collin's Drain" or the "Fortino Drain".

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

Following third reading, the appointment By-law together with a resume of drainage experience must be forwarded to the Ontario Ministry of Agriculture, Food and Rural Affairs, Environmental Management Branch, requesting formal approval of the Minister.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The City of Hamilton is responsible for Municipal Drains as defined by The Drainage Act of Ontario. In order to fund, inspect, maintain and receive grant monies from the Province, the City must appoint a Drainage Superintendent. Wayne Song is currently employed with the City as the Drainage Project Manager in the Roads Section of the Operations and Waste Management Division and has successfully completed the required training. He is qualified to serve as the City's Drainage Superintendent. In

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order for the City to be eligible for the available grants, it will be necessary to have Wayne Song appointed, by By-law, as the City's Drainage Superintendent.

ALTERNATIVES FOR CONSIDERATION

As an alternative, Council may choose not to designate a Drainage Superintendent; this is not supported by staff as it would impede the creation and maintenance of municipal drains as a means of servicing non-riparian properties and it would require the engagement of consultants administer duties under the Drainage Act.

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative & Respectful Organization

- ◆ More innovation, greater teamwork, better client focus

Intergovernmental Relationships

- ◆ Maintain effective relationships with other public agencies

Healthy Community

- ◆ Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix A: By-law to appoint a Drainage Superintendent for the City of Hamilton

Authority: Item: Name of Committee
Report:
CM: Date

Bill No.

CITY OF HAMILTON

BY-LAW NO. 13-

**To Appoint a Drainage Superintendent
for the City of Hamilton
Pursuant to The Drainage Act, R.S.O. 1990**

WHEREAS Section 93 of the Drainage Act, R.S.O. 1990 authorizes the council of a local municipality to appoint a Drainage Superintendent and provide for his remuneration for service performed by him in carrying out the provisions of this Act as set out therein;

AND WHEREAS Subsection 207(45) of the Municipal Act authorizes all municipalities to appoint such officers and servants as may be necessary for carrying into effect the provisions of any Act of the Legislature and to fix their remuneration and prescribe their duties;

NOW THEREFORE, pursuant to the Drainage Act, R.S.O. 1990, and the Municipal Act, the Council of the City of Hamilton enacts as follows:

1. Wayne Song is hereby appointed Drainage Superintendent for the City of Hamilton.
2. The Drainage Superintendent appointed hereunder shall hold office until such time as he resigns or his employment is terminated by resolution of Council.
3. The Drainage Superintendent shall carry out the duties imposed upon him pursuant to the Drainage Act, R.S.O. 1990 and shall submit such reports and carry out such other duties as may be required of him by Council from time to time.
4. The following By-laws are hereby repealed:
City of Hamilton By-law No. 02-167
5. This By-law comes into force on the passing thereof.

PASSED and ENACTED this day of , 2013.

R. Bratina
Mayor

Rose Caterini
City Clerk