



## **Staff Report for Council Meeting**

**Date of Meeting:** June 8, 2022

**Report Number:** SRCS.22.06

**Department:** Community Services

**Division:** Community Standards

**Subject:** **Inclusion of Site Alteration By-law offences in the Administrative Monetary Penalty System**

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### **Purpose:**

To incorporate various Dumping, Fill and Site Alteration By-law No. 166-07 (Municipal Code Chapter 967) offences into the City's Administrative Monetary Penalty System.

### **Recommendation(s):**

- a) That Staff Report SRCS.22.06 regarding the inclusion of Site Alteration By-law offences in the Administrative Monetary Penalty System be received.
- b) That By-law No. 34-22 (Attachment 1 to staff report SRCS.22.06) be enacted to amend the Site Alteration By-law No. 166-07 (Municipal Code Chapter 967) and facilitate enforcement and adjudication through the Administrative Monetary Penalty System.
- c) That By-law No. 35-22 (Attachment 2 to SRCS.22.06) be enacted to amend Schedule 'A' of the Administrative Penalties By-law No. 69-16, as amended, to include designated Site Alteration By-law offences.
- d) That the Yard Clearing, Draining and Filling By-law No. 218-90, as amended (Municipal Code Chapter 1022) be repealed.

### **Contact Person:**

Melinda Fartsalas, Manager of Adjudications

Jeff Walters, Manager of Development Engineering Subdivisions and Stormwater Management, Extension 6380

### **Report Approval:**

**Submitted by:** Tracey Steele, Acting Commissioner of Community Services

**Approved by:** Darlene Joslin, Interim City Manager

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All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

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### Background:

The Dumping, Fill and Site Alteration By-law No.166-07 (Municipal Code Chapter 967; the “Site Alteration By-law”) was enacted in 2007 to regulate the placement of fill, removal of soil, and the change of grades on property. The Site Alteration By-law provides for a permitting system intended to ensure that grading and filling work is undertaken in a manner that conforms to grading plans approved by the City and protects adjacent properties from flooding, ponding and erosion.

The Site Alteration By-law currently outlines an enforcement framework with 3 main components:

- Voluntary Compliance – Inspections, education and formal work orders are used to bring properties into compliance.
- Work done by the Municipality – In the event that a property owner does not comply with a work order, the City may enter onto premises and carry out required work. Costs incurred by the City can be recovered via the tax roll.
- Provincial Court Charges – Part 3 charges can be issued pursuant to the *Provincial Offences Act*, and the Provincial Courts can issue fines in accordance with Section 429 of the *Municipal Act* and/or require remedies for correction of the contravention.

The City does not currently have the ability to ticket or directly issue fines pursuant to the Site Alteration By-law.

At its February 11, 2019 meeting, in association with SRCS.19.01, Council directed:

That staff bring forward amendments to specific community standards and licensing by-laws in order to incorporate additional by-laws into the Administrative Monetary Penalty System.

### Discussion

The City receives approximately 150 site alteration service requests (including complaints and inquiries) from residents annually. Initial responses to these service requests focus on education, and the majority of cases are resolved through voluntary compliance. In circumstances where voluntary compliance cannot be obtained through property owner cooperation, the City can either lay a Part 3 charge before the Ontario Court of Justice, or undertake work to bring the site into compliance. Undertaking work on private property is typically avoided for access, risk and liability reasons and is only a viable option for resolving urgent or emergency safety concerns. As a result, the City has typically laid charges as the primary means of Site Alteration By-law enforcement.

Given the current demands on court time, the ability to issue tickets for minor site alteration offences would significantly improve Site Alteration By-law enforcement efficiency. Tickets could be issued via the *Provincial Offences Act* (POA) Part 1 framework, or via the City’s Administrative Monetary Penalty System (AMPS). Given the benefits of AMPS (as outlined in SRCS.19.01) and the existing Council direction from

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February 11, 2019 to continue to incorporate additional by-laws into AMPS, it is recommended that AMPS be utilized for ticketing. To incorporate Site Alteration By-law offences into AMPS, the Site Alteration By-law must be amended to provide for the issuance of Administrative Penalties via Penalty Notices (PNs), and Schedule A of the Administrative Penalty By-law No. 69-16 must be amended to designate Site Alteration By-law offences.

With the implementation of a ticketing system into both the Site Alteration By-law and the Waste By-law (2018), the existing Yard Clearing, Draining and Filling By-law No. 218-90, as amended (Municipal Code Chapter 1022) has limited utility associated with the prevention of ponding water and dumping of debris. It is therefore recommended that prohibitions against ponding water and debris dumping be added to the Site Alteration By-law, and that By-law No. 218-90 be repealed.

Proposed amending by-laws to affect the above are included as Attachment 1 and Attachment 2 to this report.

### **Enforcement**

The Site Alteration By-law will continue to be enforced on a complaint basis with an escalating enforcement approach. Offences will be considered and categorized as either “minor” or “major”. Minor offences are less serious violations that present minimal risk to people or property and are relatively easy to resolve. Major offences have potential to substantively impact adjacent property and necessitate significant restorative action.

Minor offences (such as failure to install or maintain erosion control measures) will first receive verbal education about the violation, if the violation continues a written warning will be issued with an indication that a fine will be issued if the offence continues past the deadline for resolution. A PN will be issued if the deadline expires before resolution.

Major violations (for example, a yard graded to drain directly onto an adjacent property) are more complicated and will need to be evaluated on a case-by-case basis. The Inspector will determine whether an Administrative Penalty or a Provincial Offences Act charge is more suitable for the circumstances. In some cases Administrative Penalties may be used at the initial stage of enforcement, acknowledging that there may be need to progress to the Provincial Courts with punitive fines and orders for final resolution.

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### **Relationship to Council’s Strategic Priorities 2020-2022:**

Inclusion of the Site Alteration By-law in AMPS is consistent with the Corporate mission statement of providing exceptional customer service and ongoing efforts to improve efficiencies consistent with the goal of Fiscal Responsibility.

### **Climate Change Considerations:**

Climate change could increase the number of site alteration challenges and better enforcement tools will help staff to address issues more efficiently.

### **Conclusion:**

At its February 11, 2019 meeting, in association with SRCS.19.01, Council directed staff to bring forward amendments to specific community standards and licensing by-laws in order to incorporate additional by-laws into the Administrative Monetary Penalty System.

The City receives approximately 150 site alteration service requests (including complaints and inquiries) from residents annually, but does not currently have the ability to ticket or issue direct fines in association with the Site Alteration By-law.

The inclusion of site alteration offences in the AMPS program will provide an additional enforcement tool and improve the enforcement response associated with site alteration complaints. In order to designate Site Alteration By-law offences for inclusion in AMPS both the Site Alteration By-law and the Administrative Penalties By-law must be amended through enactment of the attached amending by-laws.

### **Attachments:**

The following attached documents may include scanned images of appendixes, maps and photographs. All attachments have been reviewed and made accessible. If you require an alternative format please call the contact person listed in this document.

- Attachment 1 – By-law No. 34-22 to amend the Dumping, Fill, and Site Alteration By-law No. 166-07 (Municipal Code Chapter 967)
- Attachment 2 – By-law No. 35-22 to amend the Administrative Penalties By-law No. 69-16

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### Report Approval Details

Document Title:	SRCS.22.06 Site Alteration By-law Inclusion in AMPS.docx
Attachments:	- By-law 34-22 Dumping, Fill, Site Alteration By-law - Amendment.docx - AMPS By-law 35-22 - Dumping, Fill, Site Alteration.docx
Final Approval Date:	May 26, 2022

This report and all of its attachments were approved and signed as outlined below:

**Dan Terzievski - May 26, 2022 - 3:08 PM**

**Tracey Steele - May 26, 2022 - 3:16 PM**

**Darlene Joslin - May 26, 2022 - 4:04 PM**