

## Request for Decision

### Property Standards and Clearing of Yards - By-law Review

Presented To:	City Council
Presented:	Tuesday, Mar 10, 2020
Report Date	Wednesday, Feb 26, 2020
Type:	Managers' Reports

### Resolution

THAT the City of Greater Sudbury directs staff to prepare a by-law to amend the User Fee By-law 2020-26, the Property Standards By-law 2011-277, By-law 2018-121, By-law 2009-101, By-law 2011-277 and all other applicable By-laws to implement the recommended changes as outlined in the report entitled "Property Standards and Clearing of Yards - By-law Review", from the General Manager of Corporate Services, presented at the City Council meeting on March 10, 2020.

### Relationship to the Strategic Plan / Health Impact Assessment

This report supports Council's Strategic Plan to Strengthen Community Vibrancy as it relates to the review of other corporate policies to ensure they are appropriately aligned with the strategic objective.

### Report Summary

On Tuesday, July 9, 2019, Council directed staff to prepare a report to address property standards improvement as it relates to the Clearing of Yards and Property Standards By-law. This report will inform Council with respect to legislative authorities and process for the enforcement of Clearing of Yards and Property Standards matters in the City of Greater Sudbury. The report informs Council of municipal best practice standard comparisons and recommends improved standards and processes for both By-laws.

### Financial Implications

This report recommends an amendment to the User Fee By-law 2020-26, Schedule CS-7 and all other applicable By-laws to reflect a new fee of \$150 applied to any non-compliance Order/Notice that requires

#### Signed By

**Report Prepared By**

Brendan Adair  
Manager of Corporate Security and  
By-law  
*Digitally Signed Feb 26, 20*

**Manager Review**

Brendan Adair  
Manager of Corporate Security and  
By-law  
*Digitally Signed Feb 26, 20*

**Division Review**

Brendan Adair  
Manager of Corporate Security and  
By-law  
*Digitally Signed Feb 26, 20*

**Financial Implications**

Apryl Lukezic  
Co-ordinator of Budgets  
*Digitally Signed Feb 26, 20*

**Recommended by the Department**

Kevin Fowke  
General Manager of Corporate  
Services  
*Digitally Signed Feb 26, 20*

**Recommended by the C.A.O.**

Ed Archer  
Chief Administrative Officer  
*Digitally Signed Feb 26, 20*

third-party remedial action or is issued to repeat offenders for the same By-law.

Using average case volume, staff will increase revenue to \$7,050 annually. This will be an increase of approximately 58% for the average annual revenue collected in the last three (3) calendar years.

## PURPOSE

This report provides Council with information regarding the City of Greater Sudbury's enforcement model for Clearing of Yards and Property Standards matters. It provides an overview of the resources required to support the annual volume of complaints and provides a cost estimate for the continuation of this service level.

## EXECUTIVE SUMMARY

On Tuesday, July 09, 2019, Council directed staff to prepare a report to address property standards improvement as it relates to the Clearing of Yards and Property Standards By-law. As presented by Councillor Landry-Altmann and carried by Council, the motion read as follows:

*WHEREAS By-law 2009-101 being a by-law to Require the Clearing of Yards and Certain Vacant Lots, as well as By-law 2011-277 being a by-law to Prescribe Standards for the Maintenance and Occupancy of All Property have not been extensively reviewed since their creation;*

*AND WHEREAS the standards prescribed in those by-laws are minimum standards which could be raised to improve the quality of life and place and enhance the health and safety of all residents;*

*THEREFORE BE IT RESOLVED that the City of Greater Sudbury directs staff to undertake a review of the standards prescribed by By-laws 2009-101 and 2011-277 as amended, conduct comparisons with other municipalities, and present a report to Council in the 4th quarter of 2019 with recommendations to improve standards in both by-laws for Council's consideration.*

This report will inform Council with respect to legislative authorities and process for the enforcement of Clearing of Yards and Property Standards matters in the City of Greater Sudbury. This report will also inform Council of municipal best practice standard comparisons and recommends improved standards and process for both By-laws as follows:

- Increasing fees for non-compliance
- Increasing the ratio of proactive measures (blitzes and educational campaigns) to complaints

- Providing a mechanism for immediate remedial work to be completed under Property Standards to ensure the safety and security of residents
- Creating a short form wording (offences) and associated set fines for Property Standards matters
- Granting authority to Building Inspectors (in addition to By-Law Enforcement Officers) to inspect and address property standards complaints
- Making regular routine amendments to both By-laws

## **BACKGROUND**

Through direction of Council 2011-397, the City of Greater Sudbury reviewed the Property Standards By-law in 2011. As presented to Council in November 2011, this review identified opportunities for improvement within the current *Maintenance and Occupancy Standards Bylaw #2009-100*. Staff recommended a model Property Standards By-law as supported by the Ontario Association of Property Standards Officers (OAPSO), which was passed on December 14, 2011.

In 2012, a motion was passed and carried by Council to direct staff to review the Clearing of Yards By-Law for "fast tracking of minor issues". Through this process, an amendment was made to the Clearing of Yards By-law to enhance enforcement by removing the appeal period for repeat offenders. Further, in 2013, additional seasonal resources were added to the department to increase education and enforcement.

## **ANALYSIS- CLEARING OF YARDS**

### Legislative Powers of the Municipality

The City of Greater Sudbury derives authority for the enactment and enforcement of the Clearing of Yards By-law from the Ontario *Municipal Act, 2001*, S.O. 2001, c. 25. Section 127 provides the municipality with specific powers related to refuse and debris. Specifically, a local municipality may require resident to keep land "clean and clear" and specify how that is to be done.

Section 425 of the Municipal Act confirms that a “municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence.” Section 429 of the Municipal Act confirms that a “municipality may establish a system of fines for offences under a by-law of the municipality.”

Where there is a violation of a by-law, section 444 through to 446 of the Municipal Act provides authority to the Municipality to order a person to discontinue activity or to do work to correct the contravention at the violator’s expense.

Further, the Ontario Building Code Act, at Section 15.1, confirms that a Council of a municipality may pass a by-law to require specific standards for property and structures. Section 15.2 provides authority to an officer to enter upon any property without warrant for the purpose of inspection to determine whether a property conforms to standards listed in the by-law or whether there is compliance with a previously issued order.

Section 2 of the Act requires a municipality to appoint a Chief Building Official and such inspectors for the enforcement of the Act. It further appoints specific Building Services staff as “Building Inspectors” pursuant to the *Building Code Act, 1992, S.O. 1992, c.23*. By-law 2018-121 being A By-law of the City of Greater Sudbury Respecting the Appointment of Officers of the City of Greater Sudbury.

Section 19.8 of the City of Greater Sudbury Official Plan confirms that it “*will be the policy of the City to ensure that all property is maintained free of rubbish, and in such a manner as to pose no danger to health and safety, and that all structures are maintained in a state of good repair. The City will use whatever means are within its jurisdiction, including the enforcement of the Property Standards and Clearing of Yards and Vacant Lots By-laws, to ensure the good maintenance of property.*”

By-law 2018-121 being A By-law of the City of Greater Sudbury Respecting the Appointment of Officers of the City of Greater Sudbury appoints authority to identified officers as “Municipal By-Law Enforcement Officers” for the enforcement of all municipal by-laws (and the Dog Owners’ Liability Act, R.S.O. 1990).

## Clearing of Yards - Service Level

Enforcement and education are initiated on the basis of complaints. In receipt of a complaint through the Active Complaint Resolution (ACR) system, an Officer will attend the subject property to complete an inspection. Taking specific details of the complaint into account, the Officer will document issues on the property with notes and photos. While on site, Officers will attempt to speak to the resident to inform them of the violation and work toward a resolution.

The term “enforcement” addresses a variety of actions on the part of a Municipal Law Enforcement Officer while working toward compliance of any complaint. Dependent on factors that include scope and urgency for the complaint or any past offences, the response of an Officer will range from the provision of education to a resident, to requesting compliance verbally or through the issuance of a formal Notice. A Notice issued within the Clearing of Yards By-law requires an Officer to set out the particulars of the contravention, the location of the contravention, the work to be done to bring the property into compliance and the date by which work must be completed. The Officer shall also provide information regarding appeal provisions.

Finally, matters can be addressed by prosecution efforts, using authorities under the Municipal Act or Provincial Offences Act. Prosecution efforts range from the issuance of Part I Offence notices to enforcement of Notices by way of third-party work being completed with fees being transferred onto the property owner’s taxes. In the event that an Officer determines through inspection that the condition of a property constitutes a hazard to members of the public, immediate work can be done to correct the issue, with fees recovered through an invoice or collection from the property owner at the time of regular taxation billing.

Currently, there are forty (40) separate offences for violations under the Clearing of Yards By-law. In receipt of evidence that confirms a violation, an Officer can issue a Part I Offence notice (ticket) with financial penalty ranging between \$150 and \$300 per offence.

For yard clearing matters, compliance is typically defined by an improvement in the overall condition of the property to align with conditions specified in the By-law. Although an offence notice may add a level of deterrence and provides a formal Provincial Court process of appeal with a set fine, it does not mandate or achieve the desired clean up. Whether stand alone or

coupled with an offence notice, non-compliance for Clearing of Yards matters often prompts the enforcement of a Notice through third-party remedial work, with fees/costs being billed or transferred on the taxes of a property. In each of the last three years, there was an annual average of forty seven (47) third-party clean ups completed, resulting in an annual average total of \$58,569 being transferred onto property taxes for collection (2017- 61 times \$71,473, 2018- 27 times- \$43,325 and 2019- 53 times \$60,909).

In the last two years, the City of Greater Sudbury has had an increase year over year in the overall total of By-law cases assigned to officers. Using the overall amount of cases in 2017 as a starting point (6,663 cases), there was an increase of 23% in 2018 (8,189 cases) and 19% increase in 2019 (9,715 cases). Comparing Clearing of Yards cases to the overall total, this volume represented approximately 9% of the overall cases in the last three years (2017- 11%, 2018- 8%, 2019- 8%).

Table 1 below confirms the total number of Clearing of Yards cases responded to by Officers in the last three years and the total number of days for completion. The time period for completion is factored in business days from the point the case is opened until it is closed. For the purposes of estimating service level cost, staff assume one hour of work multiplied by the total number of days for completion.

Specific case work in each matter varies but the estimate is provided to allow for initial tasks such as case assignment, travel to and from the property for inspection, inspection on site and administrative process for Notice issuance and/or contact with homeowner. From this point, depending on the desire for compliance on the part of a property owner, the estimated time for completion considers enforcement efforts such as follow up inspection at the property, third party remedial work coordination and escort and appeal through the court process.

**Table 1**

<b>Clearing of Yards Complaints</b>			
<b>Year</b>	<b># of Complaints</b>	<b>Number of Days for Completion</b>	<b>Estimated Service Level Cost</b>
<b>2017</b>	719	6.9	\$185,148
<b>2018</b>	681	5.19	\$133,883
<b>2019</b>	817	6.43	\$202,358
* assuming 1hr per day for one (1) Officer x group/step 14/3 for the respective year			

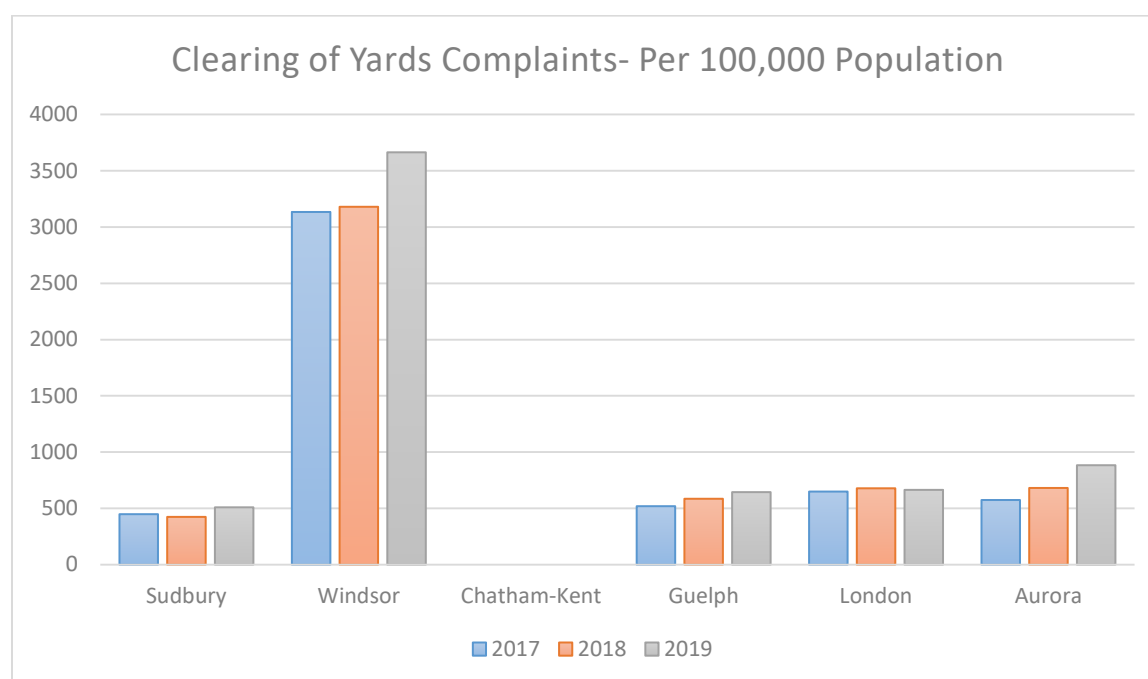
## Municipal Comparison

With differences noted in case volume (complaints per 100,000) and the application of administration fees, it's noted that municipal comparator by-laws are all very similar with respect to definitions, headings and content. The intent of each is to set minimum standards for the condition of a property as a means to support health and safety, protect from nuisance, and support the overall beautification and aesthetics of a community.

Referencing authorities through Provincial legislation, each by-law defines various roles and violations contained in the By-law and sets process and responsibility for both property owner and enforcement officer when violations are noted. In general, each By-law regulates conditions of a property for items such as grass (length), refuse, trees/shrubs/hedges, unlicensed/derelict motor vehicles, holes, pits and standing water. Where violations are noted, consistent with Municipal Act requirements, each By-law requires a Notice be issued while noting specific process and timelines for compliance. In the event of non-compliance, each lists process that includes third party clean up, guilt for an offence and the potential for user fees to be applied to property tax rolls. Using comparator By-laws, staff recommend slight amendments to wording in each By-law to reinforce the intent in areas such as dwelling heat, vacant derelict properties and standards for yards that impact the community.



**Table 2**



Within the City of Greater Sudbury User Fee By-law, Schedule CS-7 confirms the City of Greater Sudbury's ability to apply \$68 per hour for every By-Law Officer inspection applied to every inspection resulting in non-compliance of a Notice or Order that is in default. It allows for application to cover costs for Officer attendance when a Notice or Order is being remedied (third party work). For a variety of reasons, since the implementation of these fees, the application has been cumbersome for staff to effectively use; resulting in limited collection of user fees for cases of non-compliance. This has resulted in less than budgeted user fee revenue since the creation and implementation of the user fee process.

Through this review, as noted in table 3, staff have confirmed that the City of Greater Sudbury User Fee for non-compliance is between 38% and 68% less than municipal comparators. Further, the review has confirmed the existence of single fee/occasion fee structures as opposed to the per hour model that is currently in place within the City of Greater Sudbury. Considering best practice, staff recommend modifying the applicable By-laws to reflect a single fee that is applied to any Notice in default (non-compliance) and further applied to repeat offenders and properties that require third-party clean up. Using the hourly wage for a By-law Enforcement Officer (Group 14, Step 5) as a basis for the calculation, staff recommend an

increase in the fee to \$150 relative to costs associated with enforcement work and in the interest of placing priority on the appearance and health and safety of our community.

Comparator municipalities in the Municipal Benchmarking Network of Canada (MBNCan), perform more proactive enforcement efforts for yard maintenance complaints. For the last three comparison years, the City of Greater Sudbury is the sole participant in the forum that does not conduct proactive enforcement measures. For 2018, the number of proactive enforcement occurrences (like blitzes and education campaigns) as a percent of yard complaints for participating municipalities ranged from 4% to 20%. Considering most recent volume of complaints for the City of Greater Sudbury, staff recommend an annual increase to 3% in 2020 for proactive enforcement occurrences as a percent of yard complaints. Staff recommend aligning these enforcement/education blitzes with the communication of the tipping fee holiday schedule between May 11-16, 2020 and September 21-26, 2020 while ensuring that there is exposure to all 12 Wards within the community. This initiative will further include consultation and collaboration with Greater Sudbury Police Community Response Unit, Environmental Services and be communicated with support from the Communications and Community Engagement Division.

**Table 3- Clearing of Yards Comparison**

Clearing of Yards						
Municipality	Population (2016)	# of Complaints 2017	# of Complaints 2018	# of Complaints 2019	Number of Staff	Administration Fee
Sudbury	164,689	719	681	817	6 F/T 4 P/T	\$68- By-Law Officer Inspection (min 1 hour, and part thereof) applied to every inspection resulting in non-compliance of a Notice or Order that is in default (past the compliance date) and during officer attendance when a Notice or Order is being remedied

<b>Windsor</b>	217,188	6800	6900	7950	12 RFT	\$215 per hr. for contracted work (1hr min), \$215 for a repeat offender per order per calendar year
<b>Chatham-Kent</b>	101,647	Complaints are filed as property standards				
<b>Guelph</b>	131,794	686	774	852	2 F/T	\$150 Admin fee applied to all City cleanups completed
<b>London</b>	383,822	2495	2606	2552	17 F/T 1 P/T	\$110 inspection fee when compliance is not achieved upon re-inspection. Also contractor fee to clear property (minimum \$285) plus Admin fee of \$110 also applied to the invoice.
<b>Aurora</b>	55,445	316	375	486	4 F/T, 2 P/T, 1 Summer Student	No Charge for inspection at this time, unless we conduct remedial action. Then we bill the property owner for remediation costs plus administration fee.

#### Property Standards- Service Level

The response to Property Standards is also complaint based, with a response provided by a By-law Enforcement Officer. In addition to a process that mirrors what is listed above for all Clearing of Yards complaints, Officers often partner with representatives from Building Services, Fire Services and Public Health Sudbury & Districts. Each partner enforces similar legislation that supports the health and safety of residents and safety of structures and properties.

Unlike a Clearing of Yards complaint, the Property Standards By-law requires an Order be written for issues of non-compliance. Property Standards violations all fall under one category of “failing to comply with an Order” under the Building Control Act. Unlike the Clearing of Yards By-law the Property Standards By-law does not contain a provision to mandate emergency follow up to complaints. Staff recommend the creation of specific short form wording for property standards offenses and further confirming authority for an Officer to coordinate immediate remedial work for issues that pose immediate hazards.

Table 4 provides an estimate for the cost for enforcing property standard complaints. Comparing Property Standard cases to the overall total, this volume represented approximately 8% of the overall cases in the last three years (2017- 6%, 2018- 8%, 2019- 10%).

**Table 4**

<b>Property Standards</b>			
<b>Year</b>	<b># of Complaints</b>	<b>Number of Days for Completion</b>	<b>Estimated Service Level Cost</b>
<b>2017</b>	444	10.1	\$167,358
<b>2018</b>	690	5.61	\$146,630
<b>2019</b>	979	6.55	\$247,008
* assuming 1hr per day for one (1) Officer x group/step 14/3 for the respective year			

#### Municipal Comparison

In many municipalities (e.g. Windsor), Building Inspectors are authorized to inspect and address property standards issues. Although there is collaboration between By-law and Building Services, there exists a requirement for By-law to inspect any issues that will result in enforcement under the Property Standards By-law. To better streamline the service provision and allow Building Inspectors the authority to address property concerns that are viewed when on site for other inspections, staff recommend adding enforcement abilities to City of Greater Sudbury Building Inspectors.

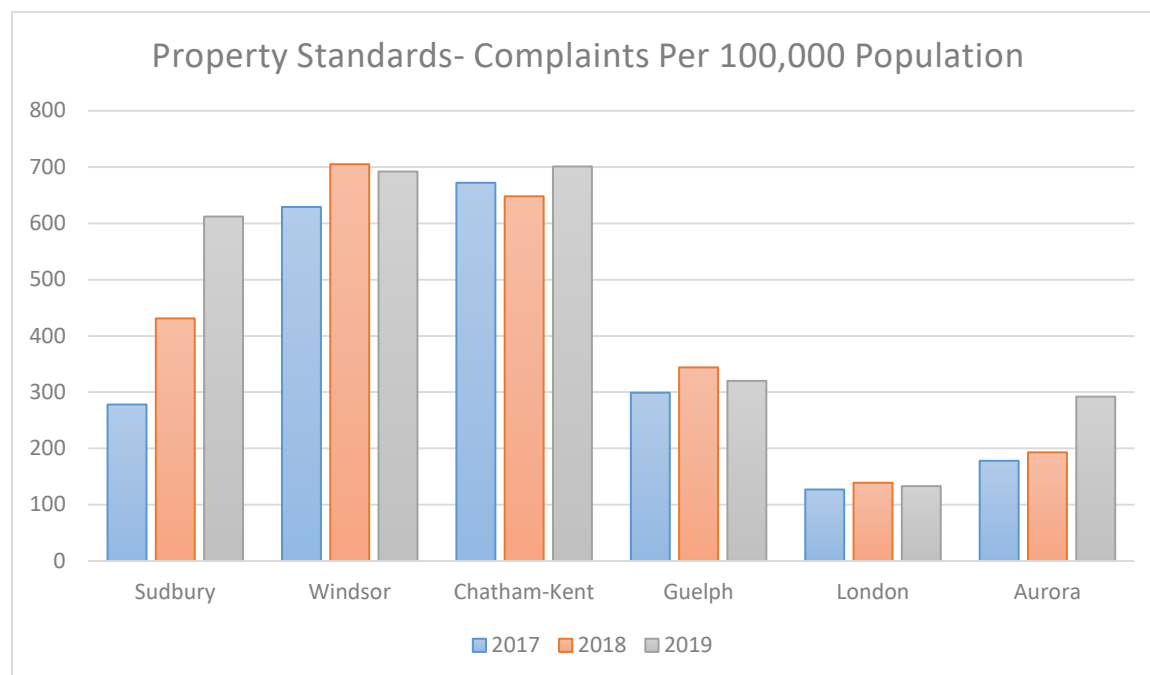
**Table 5- Property Standards Comparison**

Property Standards						
Municipality	Population (2016)	# of Complaints 2017	# of Complaints 2018	# of Complaints 2019	Number of Staff	Administration Fee
<b>Sudbury</b>	164,689	444	690	979	6 F/T 4 /T	\$68- By-Law Officer Inspection (min 1 hour, and part thereof) applied to every inspection resulting in non-compliance of a Notice or Order that is in default (past the compliance date) and during officer attendance when a Notice or Order is being remedied
<b>Windsor</b>	217,188	1362 (Building Condition)	1530 (Building Condition)	1502 (Building Condition)	7 F/T Officers & 1 Clerk	\$200.00 per Order to Repair @ issuance. \$71.00 at non-compliance inspection. \$293.00 to file charges.
<b>Chatham-Kent</b>	101,647	685	661	715	7 F/T Dual building/by-law inspectors	\$86 re-inspection fee, not currently enforced.
<b>Guelph</b>	131,794	394	454	422	2 F/T	Currently no fees
<b>London</b>	383,822	487	532	510	17F/T 1 P/T	\$110 inspection fee when compliance is not achieved upon re-inspection. PS Order is registered on title and a fee of \$125 is applied. Discharging the PS Order once compliance is achieved is an additional \$125.
<b>Aurora</b>	55,445	98	106	161	4 F/T	Remediation costs are re-covered plus administration fee. For problem properties, a re-

						inspection fee is applied once the order has matured and order has not been complied with.
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As above, comparator municipalities conduct more proactive blitzes and education compared to Greater Sudbury. For the last three comparison years, there is only one other municipality (Winnipeg) that has not provided proactive enforcement measures for property standard complaints. For 2018, the number of proactive enforcement occurrences as a percent of property standard complaints for participating municipalities ranged from 5.3% to 39.7%. Considering most recent volume of complaints for the City of Greater Sudbury, staff recommend an increase to 3% in 2020 for proactive enforcement occurrences as a percent of property standard complaints. Staff recommend aligning these enforcement/education blitzes with the communication of the tipping fee holiday schedule between May 11-16, 2020 and September 21-26, 2020 which may also align with higher volume case periods related to new student housing. This initiative will further include consultation and collaboration with Greater Sudbury Fire Services and Public Health Sudbury and District and Environmental Services and be communicated with support from the Communications and Community Engagement Division.

**Table 6**



## Public Health

Utilizing the Health Protection and Promotion Act (HPPA), Public health inspector's support in the response to some property standard concerns where there may be health hazard; defined as *"conditions, substances, or things that are likely to have a harmful effect on a person's health"*. Public Health Sudbury & Districts provides staffing resources of 14 Public Health Inspectors and three Environmental Support Officers (ESOs).

In response to concerns in the community, Inspectors enforce Section 13 of the HPPA which confirm that a *"medical officer of health or a public health inspector may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds, (a) that a health hazard exists in the health unit served by him or her; and (b) that the requirements specified in the order are necessary in order to decrease the effect of or to eliminate the health hazard"*.

Housing complaints may overlap between the City of Greater Sudbury Property Standards Bylaw and the HPPA; as such, using each respective area of expertise, By-Law Officers and Public Health Inspectors may partner for inspections. Specifically, a resident will likely experience a joint inspection for issues that include no drinking water or unsafe drinking water, no heat supply, sewage backing up into the home, poor indoor quality, major pest infestations (cockroaches, mice, rats or bed bugs), mould (and hoarding and lead paint).

## Recommendations

The following is a summary of the recommendations outlined in the report:

1. THAT staff be directed to amend the Schedule CS-7 of User Fee By-law and all other applicable By-laws to reflect a single fee of \$150 applied to any Orders/Notices that are in non-compliance, require third-party remedial action or are repeat offenders for the same By-law. Using the last three years as a basis for forecast, staff will adjust user fee revenue accounts to support approximately \$7,050 in annual revenue; and,
2. THAT staff be directed to host annual proactive enforcement for Clearing of Yards and Property Standards concerns which align with the communication of the tipping fee holiday schedule and with an overall goal of increasing the overall annual proactive

enforcement occurrences as a percent of yard and property standard complaints to 3%; and,

3. THAT staff be directed to amend the Property Standards By-law to allow for remedial work to be carried out immediately where documented non-conformity is such to the extent as to pose an immediate danger to the health and safety of any person; and,
4. THAT staff be directed to create short form wording and associated set fines for approval by the Regional Senior Justice of the Peace; and,
5. THAT staff be directed to amend By-law 2018-121 to include Building Inspectors as Municipal By-law Enforcement Officers for the purpose of enforcing Property Standards complaints; and,
6. THAT staff be directed to make regular routine changes to By-law 2009-101 and 2011-277 to reinforce the intent in areas such as dwelling heat, vacant derelict properties and standards for yards that impact the community.

## REFERENCES

Ontario Building Code Act, 1992, S.O. 1992, c. 23-

<https://www.ontario.ca/laws/statute/92b23#BK26>

Health Protection and Promotion Act, R.S.O. 1990, c. H.7-

<https://www.ontario.ca/laws/statute/90h07>

Municipal Act, 2001, S.O. 2001, c. 25- <https://www.ontario.ca/laws/statute/01m25#BK147>

Public Health Sudbury and Districts- <https://www.phsd.ca/>

City of Greater Sudbury Official Plan- <https://www.greatersudbury.ca/city-hall/reports-studies-policies-and-plans/official-plan/official-plan/op-pdf-documents/current-op-text/>



Report- Review of Clearing of Yards and Vacant Lots By-law- Monday, October 22, 2012-

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=541&itemid=6460&lang=en>

Minutes- City of Greater Sudbury Operations Committee- Monday, October 22, 2012-

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&lang=en&id=541&minutes=1>

Request for Decision- As presented by Councillor Landry-Altmann- Wednesday, September 14, 2011-

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=362&itemid=4654&lang=en>

Report- Property Standards By-law Amendments- Wednesday, November 16, 2011-

<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=389&itemid=4853&lang=en>