



Council Report

Report Number: **WWW2022-001**

Meeting Date: March 22, 2022

Title: **Mandatory Connection By-Law Review**

Description: Review of request to amend By-Law 2014-255, being the Mandatory Connection to Water and Wastewater Systems By-Law.

Author and Title: Amber Hayter, Manager, Water & Wastewater

Recommendation(s):

That Report WWW2022-001, **Mandatory Connection By-Law Review**, be received.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

Mandatory connection is an established practice where Municipalities enact requirements for qualifying properties to connect to municipal services such as water and wastewater systems. The process is supported by the Municipal Act and in general is undertaken to ensure residents have access to safe drinking water, to protect the environment, to ensure fiscal sustainability of the systems and to ensure that property owners are paying for the benefits they are receiving. Within the City of Kawartha Lakes (City), the mandatory connection program was originally conceived in 2005, however, the program was not proactively enforced like it was in other municipalities across the province.

By-law 2014-255 was initially adopted in 2014 following a significant review as part of a Lean Six Sigma Black Belt project led by the Office of Strategy Management. This project triggered an update to the original By-Law 2005-75 titled "A By-Law to Require Owners of Buildings to Connect such Building to Water Works and Wastewater Works in the City of Kawartha Lakes", to ensure it accurately reflected the intent and objectives of ensuring the By-law captured the maximized number of potential connections, enforcement measures, and realized potential cost savings for the City. Various by-laws and mandatory connection programs from other municipalities were reviewed to help provide a structured and demonstrated framework for Kawartha Lakes' program. The vast majority of programs imposed mandated connection with associated deadlines.

Since 2014, there have been many amendments and reviews of the Mandatory Connection By-law, with a number of presentations and reports provided to Council.

Following the adoption of the revised By-law in 2014, a pilot project was initiated with properties in Fenelon Falls who were subject to the requirements of mandatory connection whereby their properties fronted municipal water and/or wastewater infrastructure. Due to the large number of properties required to connect, implementation of the requirements was planned to be phased in. In the course of the pilot project a number of properties made deputations to Council requesting an exemption from the requirements. Prior to July 2017, Council had made several decisions to temporarily exempt properties from the requirements to connect, but also made a decision to collect the capital and fixed rate portion of the user rates as part of granting an exemption. As a result, a report was brought forward to Council in July 2017 recommending that all properties that are subject to the Mandatory Connection By-Law pay the Fixed Rate and Capital Levy charges (now called Fixed Rate), prior to connecting as their property is considered to be still receiving a benefit from the infrastructure available to them.

At the Council Meeting of July 11, 2017, Council adopted the following resolution:

Moved By Councillor Elmslie

Seconded By Councillor Yeo

RESOLVED THAT Report WWW2017-005, **Mandatory Connection Compliance and User Rate Cost Recovery**, be received; and **THAT** staff be directed to prepare the necessary amendments to By-Law 2014-255, A By-Law To Require Owners Of Buildings To Connect Such Buildings To Drinking Water Systems And/Or Wastewater Collection Systems In The City Of Kawartha Lakes, to begin charging qualifying properties the Fixed Rate and Capital Levy for Water and/or Sewer as per By-law 2011-260 following three (3) months' written notice.

CARRIED: CR2017-643

Following the completion of the pilot project in Fenelon Falls, Council requested a review of the effectiveness of the program and a review of alternatives for addressing physical connection requirements outlined in the By-Law. A presentation was made to Council on September 18, 2018, providing a history of the by-law, an overview of the pilot project in Fenelon Falls, review of the benefits of being connected to municipal water/wastewater services, summary of recent amendments and options moving forward with respect to implementation of the by-law. A report was later brought forward to Council on September 25, 2018, whereby alternatives were discussed on how to better implement the program in order to ease the financial burdens placed on the properties that fell within the boundaries of municipal services, while also taking in to account the long term viability of the water and wastewater infrastructure for CKL.

At the Council Meeting of September 25, 2018, Council adopted the following resolution:

CR2018-591

Moved By Councillor James

Seconded By Councillor Yeo

That Report **WWW2018-008, Water Wastewater Service Connection Strategy**, be received; and

That staff be directed to prepare the necessary amendments to By-Law 2014-255, A By-Law to Require Owners of Buildings to Connect Such Buildings to Drinking Water Systems and/or Wastewater Collection Systems in the City of Kawartha Lakes, to require property owners who meet requirements of

mandatory connection process to connect to available municipal water and/or wastewater services upon failure of their private infrastructure.

Carried

The amendments were made and report was brought forward before Council and endorsed on January 15, 2019:

CR2019-032

Moved By Deputy Mayor Elmslie

Seconded By Councillor Veale

That Report WWW2019-003, **Amendments to By-law 2014-255, Requirement to Connect to Municipal Services**, be received; and

That Section 2.01 of By-law 2014-255 be amended to read: “Subject to section 2.02 herein the owner of any Building as defined herein where such service or services have capacity, shall be responsible for the physical installation of a private sanitary lateral and/or private water service at the Owners expense and shall be responsible for the payment of all fees and charges payable to the Municipality for the installation and connection of a municipal sanitary lateral and/or water service in accordance with the provisions of this By-law and any and all by-laws governing connections to municipal drinking water systems and wastewater collection systems upon failure and/or the need for replacement of their existing private water supply and/or sewage/septic disposal system(s). For further explanation refer to Appendix 1: Connection Diagram.”; and

That Section 2.02 of By-law 2014-255 be amended to read: “Subject to section 2.01, in the event that water and/or wastewater services become available after the date of passage of this By-law, persons described in section 2.01 shall connect their premises directly to the services in accordance with section 2.01 upon failure of their water and/or sewage/septic disposal system(s).”; and

That Section 2.03 by By-Law 2014-255 be amended to read: “Notwithstanding sections 2.01 and 2.02, in the event that:

Carried

In addition to the above resolution, Council also passed the following resolution:

CR2019-033

Moved By Deputy Mayor Elmslie

Seconded By Councillor Richardson

That staff be directed to investigate the financial implications and potential impacts of:

- The City assuming fiscal responsibility for installation of water and sewer infrastructure to property lines for those properties required to connect to City services;
- Options to exempt farm or other properties where compliance with mandatory connection requirements is either unrealistic and/or cost prohibitive;
- Discontinuing fixed rate charges for properties that are unlikely to hook up to City services; and

That staff report back to Council by end of Q3 2019.

Carried

In July 2019, a presentation and report were presented to Council to address the above resolution, with the following resolution adopted:

CR2019-433

Moved By Councillor Dunn

Seconded By Councillor Yeo

That Report WWW2019-010, **Review of Mandatory Connection By-law 2014-255**, be received; and

That staff be directed to report back in September 2019 with options for amending the Mandatory Connection By-law to provide relief from mandatory connections for the 134 properties not currently connected to municipal services, up to and including complete exemption from the by-law.

Carried

Recommendations from the Committee of the Whole meeting of September 10, 2019 were brought forward to the Council Meeting of September 24, 2019, whereby Council adopted the following resolution:

CR2019-541

Moved By Deputy Mayor Elmslie

Seconded By Councillor O'Reilly

That Report WWW2019-007, **Requirement to Connect to Municipal Services Review**, be received;

That Alternative 1 outlined within Report WWW2019-007 be endorsed;

That staff be directed to prepare the necessary amendment to By-law 2014-255, being the Mandatory Connection By-law, to reflect Alternative 1 within Report WWW2019-007; and

That staff be directed to prepare an amendment to By-law 2018-039, being the by-law to Regulate Water and Wastewater Services, to require property owners who meet the requirements for mandatory connection to pay a fixed rate of \$50.00 per quarter for water services and \$50.00 per quarter for wastewater services; and

That the revised fee structure be implemented effective January 1, 2020.

Carried

Although Staff had recommended that the By-Law remain in its current state at that time, the implementation of the new Mandatory Connect Fee was considered a compromise, in that property owners are still contributing financially to the maintenance and replacement of the infrastructure available to their properties, and helping to pay for some of the benefits they may receive such as fire protection, recognizing that they may not be receiving the full benefits as those already connected. These amendments also included the change for all appeals related to certain sections in the By-Law be sent directly to Council for consideration.

At the time of the passing of the above amendments Council directed staff to conduct a cost review and provide budget implications on the feasibility of the City paying for and installing water and wastewater infrastructure up to the property line for the properties currently paying the Mandatory Connect Fee(s). The following resolution was passed:

CR2019-542

Moved by Councillor Veale

Seconded by Deputy Mayor Elmslie

That staff be directed to bring forward a costing report by end of Q1 2020 to assess the costs associated with the City installing water and wastewater infrastructure to the property lines for those properties required to connect under the Mandatory Connection By-law.

Carried

A report was brought forward to the Committee of the Whole Meeting of March 10, 2020, where information was provided to Council on the cost implications of the City assuming fiscal responsibility for the installation of water and sewer infrastructure to

property lines for those properties required to connect through Mandatory Connection. The report affirms the lateral from the City's water main to the home is provided for the sole benefit of the resident. As such the fiscal responsibility for that infrastructure belongs to the property owner. Providing laterals free of cost to the benefitting property would be an undue burden to the other system users and is inconsistent to the expectations of the Municipal Act, which could consider it "bonusing". Staff did not recommend subsidizing the cost of connection. This recommendation was later adopted by Council at the Regular Council Meeting of March 19, 2020, with no further actions required.

November 16, 2021 Council heard a deputation from Marc P. Kemerer of Devry, Smith, Frank LLP representing the Lindsay Coalition Against Unlawful Water Billing, requesting that Council instruct staff to discontinue billing for water and sewer services to those households not connected to and not using City services; refund all past paid charges to residents and businesses; and amend the current by-law to remove the requirement to pay the Mandatory Connect Fee.

At the Council Meeting of November 16, 2021, Council adopted the following resolutions:

CC2021-18.6.4

**Request to Amend By-Law 2014-255, Mandatory Connection to Water and Wastewater Systems By-Law
(Item 7.2 on the Agenda)**

Marc P. Kemerer, Devry Smith Frank LLP

Marc P. Kemerer provided an overview of a request to amend the City's Mandatory Connection to Water and Wastewater Systems By-Law; with specific interest in the requirement for property owners to pay for water services that they are not connected to.

CR2021-528

Moved By Councillor Dunn

Seconded By Councillor Yeo

That the deputation of Marc P. Kemerer, of Devry Smith Frank LLP, **regarding a request to amend By-Law 2014-255 being the Mandatory Connection to Water and Wastewater Systems By-Law**, be received.

Carried

And

CC2021-18.7.2

**Correspondence Regarding a Request to Amend By-Law 2014-255,
Mandatory Connection to Water and Wastewater Systems By-Law**

Marc P. Kemerer, Devry Smith Frank LLP

CR2021-530

That the correspondence from Marc P. Kemerer, of Devry Smith Frank LLP, **regarding a request to amend By-Law 2014-255, being the Mandatory Connection to Water and Wastewater Systems By-Law**, be received and referred to Staff for review and report back in Q1 of 2022.

Carried

This report addresses that direction.

Rationale:

Staff have reviewed the requests made by Mr. Marc P. Kemerer of Devry Smith Frank LLP, representing the Lindsay Coalition Against Unlawful Water Billings ("Coalition"), and do not recommend that any changes be made to By-Law 2014-255 "Mandatory Connection to Water and Wastewater Systems".

As reviewed in detail above in the Background section of this report, Council has already made numerous amendments to the By-law to alleviate financial pressures on those residents who are subject to the requirements of the By-law. These amendments specifically include:

1. Allowing properties to continue to use private services until such time as their private infrastructure fails (ie. Well failure or septic system failure).
2. Reducing payment of fees from the Fixed Rate portion of the User Rate to a lesser amount of \$50 per quarter, per service (Mandatory Connect Fee).

It was previously acknowledged by Council that the properties subject to mandatory connection were still receiving benefits from having services available to them, including increased property values, potential reduced insurance premiums for fire protection, reduced risk from contamination and drought effects, and a guaranteed safe drinking water source. This was the primary reason the special Mandatory Connect Fee was introduced recognizing that by not paying anything, properties would continue to benefit from the services without fairly contributing to the operations and maintenance

of the infrastructure, but at the same time taking into consideration they may not be receiving the full benefit of being connected.

As has been presented in the past, having a By-law requiring mandatory connection continues to be consistent with other municipalities. Council has already provided significant leniency to those qualifying when compared to other municipal connection programs.

Staff recommends that no further amendments are made to By-law 2014-255, all amendments that have been made, have been made to help alleviate financial pressures on property owners, as well as given property owners some flexibility and leniency on the time of connection. Any further amendments, may place further unfair burden on existing users.

Other Alternatives Considered:

As illustrated in the background and rationale sections, the decision to emplace the fee identified in the By-law was enacted over time with Council's careful consideration of making the program fair and manageable for residents. Regardless of these concessions, residents represented by the Coalition still believe the process to be unfair. Coalition members receive the benefit of having service allocation, having assets in place for fire protection (in many cases) and immediate access to safe drinking water. Under the current program, residents are enabled to use the remaining life of their well and/or septic assets prior to connecting to municipal infrastructure. Although Staff recommend By-law 2014-255 remain unchanged from its current form, and the program continue with fees charged as defined in the By-law, Council could choose to amend the program. Two alternatives include:

1) Act on some or all of the "Coalition" requests

Council could choose to direct staff to make the necessary amendments to By-Law 2014-255, specifically removing section 2.06 and the requirement to pay the Mandatory Connect Fee. This is not recommended by Staff and this would increase the financial burden on the user rate payers and ultimately increase the costs to all users.

2) Reconsider the previous decisions and require immediate connection

Council could opt to require immediate connection similar to many other municipalities. This option would eliminate the concern of paying a fee when not connected to the system. This would be supported by Staff as it would align with the approach taken by

other municipalities. However, Staff are not currently recommending this because Council has provided previous direction on the matter.

Alignment to Strategic Priorities

The recommendation to Council is consistent with the Council Adopted Strategic Plan in the following ways:

“Vibrant and Growing Economy” – will be met through the proper servicing and collection of appropriate user fees to fund the maintenance, capacity and growth of the municipal water and wastewater systems.

“A Heathy Environment” – connection to municipal water and wastewater systems supports enhancement and protection of source water and ground water.

“Good Government” – will be met through increasing the efficiency and effectiveness of service delivery by streamlining rate adjustments within the by-law and ensuring that the municipal assets are well maintained and managed.

This report is also in line with the City’s values as it reviews and analyzes the sustainability of the municipal drinking water systems and wastewater systems in a transparent and accountable way.

Financial/Operation Impacts:

As outlined earlier in this report, the City has been collecting fees for mandatory connection since 2017. From 2017 until February 2022, the City has collected a total of \$157,250.52.

The Water and Wastewater budget for 2022 totals more than \$24 million and on an annual basis, the City collected roughly \$35 thousand in revenue through mandatory connections. The mandatory connection revenue therefore is a small component of the total budgeted revenue.

The rationale for having a mandatory connection fee is not about the revenue it generates, but it is about the principle of fairness. The methodology of applying the mandatory connection fee to property owners who have access to a service is consistent with the methodology used in calculating property taxes. All property owners pay for all services, whether or not they use them. As an example, all property owners pay for Library and Recreation Services, but may never use either service, but the service is available to them should they wish to use them.

The water and wastewater infrastructure that passes in front of the subject properties is available for their use, should they wish to connect.

Consultations:

Director of Public Works

Director of Engineering and Corporate Assets

Director of Corporate Services

Manager, Revenue and Taxation

City Solicitor

Department Head email: brobinson@kawarthalakes.ca

Department Head: Bryan Robinson