

Item:



## Committee of the Whole Report

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**DATE:** Tuesday, May 07, 2019

**WARD(S):** ALL

**TITLE: FENCE BY-LAW REVIEW**

**FROM:**

Mary Reali, Deputy City Manager, Community Services

**ACTION:** DECISION

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**Purpose**

In line with the Council-approved By-law Strategy, By-law and Compliance, Licensing and Permit Services (BCLPS) are reviewing municipal regulations related to fences, to ensure the City's by-laws continue to be up-to-date, relevant and effective.

**Report Highlights**

- This review's intent is to consolidate the City's fence-related regulations, as well ensure that the by-law addresses new types of popular fencing.

**Recommendations**

1. Adopt the proposed consolidated Fence By-law in Attachment 1 of this report; and
2. Authorize staff to undertake any other actions required to implement the recommendations of this report, including any consequential amendments to other by-laws.

**Background**

In 2014, City Council adopted the *By-law Strategy*, which introduced a strategic framework for review, creation and amendment of the City's By-laws and related regulatory public policies. Guided by the Strategy, staff have undertaken, and continue to carry out, comprehensive reviews of the City's regulatory frameworks to better address emerging issues and protect the public interest by establishing relevant,

effective public policies that continue to support health and safety, quality of life and well-being of our residents. Vaughan remains one of the five fastest growing City's in Canada and a City of choice for residents and visitors alike.

The City of Vaughan has several by-laws with fence-related provisions, including:

- Fence By-law 80-90, which addresses height, description and other physical requirements;
- Fence Apportionment of Cost By-law 175-93, which addresses cost-sharing for fencing between neighbours;
- Property Standards By-law 231-2011 also contains regulation with respect to maintenance of fences; and
- Encroachment By-law which states that fences must meet the requirements under that by-law and the Fence By-law, requiring an encroaching fence to be maintained in good condition or to be removed.

These by-laws have been amended numerous times and are out-of-date with respect to some terminology and the types of fencing they address.

### ***Research and consultation overview***

BCLPS undertook a range of research and consultation with respect to fences, including:

- review of Complaints received by the City;
- consultation with City of Vaughan staff in BCLPS, Development Engineering, Development Planning, Transportation and Forestry Services, and other departments;
- review of regulations in other municipalities, such as Brampton, Burlington, Hamilton, London, Markham, Mississauga, Ottawa, Richmond Hill, Toronto, and Vancouver;
- engagement of contractor associations and contractors licensed within Vaughan;
- engagement of major retailers involved with fencings;
- public consultation, which included residents and Ratepayer's Associations;
- review of Fence Height Exemption requests; and
- engagement of the BILD association to reach out to their members through their newsletter.

### ***How fences heights and other characteristics are determined***

Fence heights are determined by Development Planning (DP) through utilization of architectural design guidelines and City standards, to ensure relative uniformity across communities. Some fences, such as those along major roadways or that serve noise attenuation purposes, are built at a higher height and/or with greater breadth, and are

required to be maintained according to those specifications in order to serve their purpose.

### ***Opportunities to improve fence regulation***

From review of public complaints, public input through consultations, and observations by field staff, the following issues were identified:

- improper placement of fences associated with private property on public land, which the City is therefore required to maintain;
- poor condition of fences on public property;
- use of various types of fence types that are not addressed by the by-law, such as cement, chain-link, noise attenuation fence/wall, wrought iron, newer designs and material;
- fence disputes among neighbours, and a need for greater clarity on who is responsible for the costs of repairing fences;
- need for greater clarity on the permitted height of fences in accordance with their location (i.e., interior, exterior, rear yards);
- need for greater guidance on points of reference for consistently and fairly measuring fence height;
- need for greater clarity on what constitutes “open construction” with respect to fencing;
- deficiency of the definition of fence in capturing all relevant forms of screening (e.g., hedges and shrubs);
- lack of regulatory centralization (i.e., need to consolidate regulations and ensure consistency with other relevant by-laws); and
- lack of detail in fence maintenance requirements.

### ***Fence height exemptions***

The Fence By-law allows members of the public to apply for fence height exemptions. Since 2016, there have been 24 fence height exemption applications, with 10 applications in 2016, 4 in 2017 and 10 in 2018. Of the 24 applications, 16 were approved, 4 were denied, 3 are pending review, and 1 was withdrawn. The average requested height in the rear yard is 2.29 metres (7’6”). The average requested height in the front yard is 1.73 metres (5’8”).

### ***Regulation in other municipalities***

There is some variation in fence height requirements across municipalities with maximum height requirements ranging from 1.2 to 2.0 metres. Height requirements also vary depending on zoning and in some municipalities, depending on which part of the yard the fence is located, such as front versus side.

With respect to pool enclosures, most municipalities have identical regulations that require the clearance under pool fencing not to exceed more than 10 centimetres, with

Vaughan being the exception, limiting the clearance under a pool enclosure to no more than 5 centimetres.

Allowable fence materials are similar across municipalities, with most permitting:

- wood (including solid panels, boards, or vertical pickets);
- chain-link; and
- wrought iron.

Some municipalities also permit other materials such as masonry or hedges and shrubs. Many municipalities, including Vaughan, also have further specifications for the use of each material type.

The type and design of fences in use have changed in recent years, with staff observing a rise in popularity of reinforced plexi-glass, tempered glass, horizontal wood boards, and metal fences other than wrought-iron.

### **Analysis and Options**

Based on stakeholder and public input in addition to research that included jurisdictional scans, staff developed the following recommendations (with their corresponding rationale):

Table 1 – Current state, recommendations and reasoning

No	Current state	Suggestion/ update	Reasoning
1	Regulations related to fences are currently in the Fence By-law, Property Standards By-law and Fence Apportionment of Cost By-law.	<ol style="list-style-type: none"><li>1. To consolidate provisions from the Fence By-law and to defer fence-related requirements or standards in other by-laws to this by-law.</li><li>2. To align all definitions and terminology in the consolidated Fence By-law, Fence Apportionment of Cost By-law, Property Standards By-law and Encroachment By-law in line with current regulations and City policies and practices.</li><li>3. To maintain the Apportionment of Costs By-law as a separate by-law.</li></ol>	To ensure all fence related by-laws are aligned, and up-to-date, but as well to ensure the public sees the distinction between the fence regulations enforced by the City and their associated penalties, and the Apportionment of Costs By-law which provides procedural information.

No	Current state	Suggestion/ update	Reasoning
2	Fence regulations contain outdated terminology and definitions.	To update definitions within all by-laws and terminology in line with current regulations and City policies and practices.	A more accurate and up-to-date by-law.
3	<p>Fence height limits are between 4 and 6 feet, and people may apply for a fence height exemption.</p> <p>Over the last three years, COV has only received 24 requests for Fence Height Exemptions.</p>	To continue to keep fence standards as they are now, maintaining existing design standards.	The existing standards appear to serve the needs of residents and the existing community, however also allow for exemptions to be sought.
4	<p>The City requires that for swimming pool enclosures made of wood or wrought iron, that vertical boards or bars not be placed more than 3.8 cm (1.5 in) apart when the horizontal rails are closer than 1.2 m (4 ft) from each other, or 7.6 cm (3 in) if the rails are at least 4 ft apart.</p> <p>For those using wrought iron, this requires custom enclosures, which can be significantly more expensive.</p>	Bring the required vertical board and bar spacing for swimming pool enclosures in line with industry-standard spacing, requiring that such spacing does not exceed 10 cm (4 in). Such requirement is also in line with safety-based standards originally established for guards and rails.	This standard will continue to ensure the safety of swimming pool enclosures, but will allow residents to purchase standard wrought iron fences rather than having to purchase much more expensive custom ones.
5	In other cities, plexi-glass is becoming increasingly popular for use in fence pool enclosures.	The by-law should outline standards for solid plexiglass for swimming pool enclosures, in which glass panels used in pool fences must meet federal	Plexiglass swimming pool enclosures would provide greater visibility to view those using the pool,

No	Current state	Suggestion/ update	Reasoning
	The current Fence By-law allows for usage of different materials, however does not address safety standards with respect to glass.	Canadian General Standards Board (CAN/CGSB) standards, including CAN/CGSB-12.1-M Glass standards for “Tempered or Laminated Safety Glass” or “Wired Safety Glass.”	providing greater safety.
6	<p>The current Fence By-law is unclear about from where fence height should be measured.</p> <p>The City’s Infill By-law also requires that a permit be required to change the original grade of a property.</p>	<p>To clarify that fence height should be measured from the finished grade where the fence is erected, provided that the grade is in line with City standards.</p> <p>In instances where the grade is different on two sides of a fence, the higher grade should be used to measure the height of the fence to ensure that both property owners have a minimum standard of privacy.</p>	In the instance where the finished grade is not in line with City standards, then the fence height should be measured from the grade in line with City standards.
7	<p>For fences in the front yard, the by-law requires that the top one-third of the fence be “open construction”, i.e., have panels spaced far enough apart, to ensure adequate visibility of pedestrians and passing motorists.</p> <p>The wording of this requirement is often interpreted differently.</p>	<p>To amend the current definition of open fence construction to mean fence construction that provides motorists and pedestrians with an unobstructed view of people, vehicles and their movements through the entire length of the fence.</p> <p>To amend the by-law to advise that:</p> <ul style="list-style-type: none"> <li>Any fence within 2.4 metres of any driveway shall be an open mesh chain-link fence or of an equivalent open-fence construction for at least 2.4 metres from the lot line at which the driveway begins so as not to obstruct</li> </ul>	To address visibility in a more easily enforceable manner, to ensure greater safety for pedestrians and motorists.

No	Current state	Suggestion/ update	Reasoning
		<p>the view of the boulevard or highway.</p> <ul style="list-style-type: none"> <li>• In the case of a parking lot, any fence shall be an open mesh chain-link fence or of an equivalent open-fence construction anywhere it may otherwise restrict the sight lines of vehicular or pedestrian traffic in the parking lot.</li> <li>• Vegetation not be permitted to obstruct the view through open fence construction.</li> </ul>	
8	The current by-law does not contain information with respect to permitting.	Create provisions to add additional clarity around permitting, such as instances in which the Director or delegate may refuse or revoke a permit, such as due to false information provided.	This would provide greater clarity to residents with respect to fence pool enclosure permitting processing.
9	<p>The current by-law contains provisions related to pool fence enclosures, however, has only basic information with respect to temporary fencing.</p> <p>Temporary fencing is currently used to secure open excavations, such as to prevent persons from potentially falling in during the construction period.</p>	Create provisions to permit temporary fencing prior to a permanent pool fence enclosure begin constructed, subject to Director approval.	This would provide greater clarity to residents with respect to use of temporary fences and required standards, enabling greater safety during construction.
10	Electrified fences are permitted on	To amend the by-law to include the following conditions with	This provision is intended to better

No	Current state	Suggestion/ update	Reasoning
	agricultural land, however there are no other specified provisions with respect to their usage.	<p>respect to electric fences on agricultural land:</p> <ul style="list-style-type: none"> <li>• that they can only be used when land is in actual use for raising livestock;</li> <li>• that the fence does not carry electricity of more than 12 volts;</li> <li>• is designed and installed only to contain livestock; and</li> <li>• has signs installed at not more than twelve-metre intervals along the fence warning that the fence carries electricity.</li> </ul>	regulate the use of electrified fences to mitigate the potential for potential injuries
11	The by-law doesn't address prohibited materials for fences.	<p>To amend the by-law to include the following:</p> <p>No person shall erect, own or maintain, or cause or permit the erection or maintenance of any fence that:</p> <ul style="list-style-type: none"> <li>• uses materials not usually intended for use in permanent fencing, unless specifically permitted by this by-law; and</li> <li>• includes sheet metal or corrugated panels of any material.</li> </ul>	This provision is intended to make explicit that only fences of the type and construction provided for in the by-law are permitted.
12	The by-law doesn't address exemptions to the by-law for fences required to be erected under various laws, agreements and plans, such as acoustic fences.	Amend the by-law to advise that if a person is required to erect a specified fence under a site plan agreement, a subdivision agreement, another City by-law or any law, statute or regulation of a provincial or federal authority having jurisdiction, the fence is exempt from the provisions of this	To ensure that the by-law addresses exemptions in a transparent manner.



No	Current state	Suggestion/ update	Reasoning
		chapter with which it does not comply.	
13	The current regulations advise that a person in contravention of the by-law may be subject to a fine of not more than \$2000.	Create a provision to advise every Person who contravenes this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of expenses, as provided for in the Provincial Offences Act.	To strengthen the City's ability to enforce regulations, increasing the potential penalty in line with other property-related by-laws, such as the Encroachment By-law.
14	The by-law does not address the right of officers to enter a premise to inspections or rules governing the notices to comply.	Create provisions to grant enforcement officers the right to enter a premise to inspect a fence, and rules with respect to notice delivery.	To outline inspection and notice regulations in a clear and transparent manner.
15	Many fences were lawfully erected under various provisions and agreements, which may not be in line with the proposed by-law.	Create a provision that any fence or swimming pool enclosures that was lawfully erected prior to the enactment of the by-law is deemed to comply with this by-law until they are replaced, and any replacement fence or swimming pool shall comply with this by-law.	To govern fence standards in line with the approach of the Building Code.
16	Many fences for private property were mistakenly built on public land, and as such, are maintained by the City at a significant expense.	This issue is already being addressed for new developments.	City staff are already ensuring all new private fences are built on private lands.

### **Financial Impact**

There are no anticipated financial impacts.

## **Broader Regional Impacts/Considerations**

The recommendations in this report will create greater affordability and choice for residents, enabling interested residents to construct wrought iron fences for their pool enclosures using standard rather than more expensive custom fencing, as well as use additional types of popular fencing.

## **Conclusion**

Adoption of the recommendations as outlined in this report is in keeping with the City's *By-law Strategy* and directly aligns with the 2018-2022 Term of Council Service Excellence Strategic Plan, namely (Area 2): CITY BUILDING to ensure continue to support key initiatives that encompass good urban design practices, (Area 6): GOOD GOVERNANCE, ensuring transparency in City regulations. The introduction of a new comprehensive and enhanced fence by-law will ensure the City of Vaughan and its communities have up-to-date, relevant, centralized fence regulations that also address emerging contemporary types and standards of fencing, accordingly.

**For more information**, please contact: Gus Michaels, Director of By-law and Compliance, Licensing and Permit Services, ext. 8735

## **Attachments**

1. Proposed Amendments

## **Prepared by**

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