

City of Mississauga

Corporate Report



<p>Date: May 6, 2025</p> <p>To: Chair and Members of General Committee</p>	<p>Originator's files:</p>
<p>From: Raj Sheth, P.Eng, Commissioner of Community Services</p>	<p>Meeting date: May 21, 2025</p>

Subject

Fence By-law Review

Recommendation

1. That the Fence By-law 0397-1978, as amended, be further amended, as set out in the Appendix 2 of the corporate report from the Commissioner of Community Services, dated May 6, 2025, entitled "Fence By-law Review".
2. That all necessary by-laws be enacted.

Executive Summary

- The Fence By-law 0397-1978 was enacted in 1978 and outlines the restrictions to building a fence or privacy screen within the City, including fences along highways and electric or barbed wire fences.
- In 2024, Compliance & Licensing Enforcement received 272 complaints regarding fences, 111 inquiries related to requirements for building or constructing a fence, and seven exemption applications, four of which were approved.
- Staff recommend that hedges, shrubs, and trees that act as a fence, and are not located within a front yard or sight triangle, should not be restricted to the existing 2 metre height limit outlined in the Fence By-law.
- Further by-law amendments include streamlining the exemption process by changing the requirement for consent from abutting neighbour(s) to instead be notification of the abutting neighbour(s) and by removing the provision enabling Council to override the Commissioner's decision by default.
- Staff also recommend that the Part III Provincial Offence maximum fine be amended to a minimum fine of \$500 and a maximum fine not exceeding \$100,000.

Background

The Fence By-law 0397-1978 (the By-law) was enacted in 1978 and establishes regulations for building a fence or privacy screen within the City, including restrictions for fences along highways and the use of electric or barbed wire fences. The Compliance & Licensing Enforcement section enforces the By-law through the issuance of Notices of Contravention(s) (NOCs) and Provincial Offence Notices (PONs) for violations found through inspections. Currently, to obtain a fence exemption, a resident must complete an application that includes a property survey, site plan, construction specifications, and the consent of abutting neighbours.

In 2023, Enforcement received two directions from Council. Recommendation GC-0207-2023 directed staff to pause the issuance of NOCs related to fence height pending a comprehensive review of the By-law. Separately, Recommendation GC-0502-2023 directed staff to review the requirements for exemptions under the By-law.

Present Status

In response to Council's direction, Compliance & Licensing Enforcement identified several administrative and operational limitations of the By-law that need to be addressed to improve the By-law's clarity and operational efficiency. These limitations include ambiguity in the By-law's definitions, lack of clarity of general provisions as they relate to fence height and building materials, exemption requirements, and limited fines.

A fence, as defined in the By-law, *"includes a railing, wall, hedge, line of posts, shrubs, trees, wire, gate, boards, pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, to establish a property boundary, or to provide privacy"* and is restricted to 2 metres in height. Within 4.5 metres of the nearest street line, in a front yard, fence height is further restricted to 1 metre if the fence is of solid construction, and 1.5 metres if the fence is of open construction.

Although exemption requests are permitted, under provision 13(2), *"every application for an exemption shall be in writing and shall contain the following supporting documentation"* including subsection (e) *"consent from the abutting neighbours to the exemption request"*. This requirement may act as a regulatory barrier, as failure to receive consent from the abutting neighbours results in an incomplete application, which would not be considered by Compliance & Licensing Enforcement. In such cases, the only recourse for an applicant is to present their request for an exemption to Council, which may still consider the matter even if all supporting documentation is not provided. The option to present an exemption request to Council is permitted under provision 13(7), which states that Council has the authority to overrule a decision of the Commissioner.

In 2024, Compliance & Licensing Enforcement received 272 complaints regarding fences, 111 inquiries related to requirements for building or constructing a fence, and seven exemption

applications - four of which were approved. Upon initial inspection, if a Municipal Law Enforcement Officer (MLEO) observes a violation, a property owner is issued an NOC. At that point, the property owner may either apply for an exemption or become compliant with the regulations before a penalty is issued.

Comments

Staff recommend the following amendments to the By-law.

Definitions

To improve clarity, staff are recommending the following amendments to the Definitions section:

1. **Aligning term definitions with those outlined in the Zoning By-law** – Terms including ‘corner lot’, ‘erect’, ‘lot’, ‘street line’, ‘front yard’, ‘interior side yard’, ‘exterior side yard’ and ‘rear yard’ do not align with the definitions in the Zoning By-law. Additionally, the definition of ‘Street line’ will be expanded to clarify that it may also be interpreted as ‘property line’.
2. **Defining terms referenced within the By-law in the Definitions section** – For example, *fence of open construction* is defined within provision 6(1) but not within the Definitions section of the by-law which limits clarity for residents.
3. **Updating the definition of *hazardous material*** – The By-law currently prohibits the use of barbed wire, electrical fences (not used for agricultural purposes), and other hazardous materials. To align with the jurisdictions reviewed, staff recommend expanding the list of hazardous materials to include sheet metal, corrugated metal, chicken wire, and razor ribbon.

General Provisions

For administrative and operational efficiency, staff are recommending the following amendments to the general provisions of the By-law:

1. **Removing all imperial measurements** – Imperial measurements will be removed as they are not exact equivalents to the metric measurements regulated by the By-law. This recommendation is further supported by a scan of other jurisdictions, none of which include imperial measurements in addition to metric.
2. **Updating provision 6(4) to remove subjectivity** – This provision outlines the type of fence required when the rear yard of one property abuts the front yard of an adjoining property. Staff recommend removing the phrase *“and the safety of passing pedestrians from vehicular movement may be affected by the presence of a solid type rear yard fence”*, as it introduces ambiguity into the By-law and relies on subjective interpretation.

Removing this clause will not eliminate safety as a consideration - Compliance & Licensing Enforcement will continue to assess potential safety impacts during reviews, but it will ensure that decisions are based on objective criteria already embedded in the By-law, rather than individual judgment. This change supports greater clarity, consistency, and fairness in enforcement across all properties.

3. **Conducting housekeeping amendments** – As the By-law was originally enacted in 1978 and has undergone limited amendments since then, staff recommend necessary legislative housekeeping amendments. These amendments will address outdated legislative references, ensure alignment with standards being recommended in this report, and improve overall clarity and consistency within the By-law.

Hedges, Shrubs, and Trees

Staff recommend that hedges, shrubs, and trees that act like a fence, but are not located within a front yard or sight triangle, should not be subject to the 2 metre height restriction, currently outlined in the By-law. Hedges, shrubs, and trees will be permitted to grow beyond 2 metres in height, provided they are well maintained and conform with other applicable by-laws like the Property Standards By-law.

A jurisdictional scan of Brampton, Hamilton, Ottawa and Toronto revealed alignment with this recommendation, as none of the municipalities restrict the height of hedges, shrubs, or trees that function as a fence when located outside of a front yard or sight triangle (See Appendix 1).

Exemption Process

To streamline and increase transparency of the exemption process, staff are recommending the following:

1. Amending provision 13(2)(e) to replace the requirement for consent with a requirement for notification of the abutting neighbour(s) – This amendment would align with Enforcement's current noise exemption process, which requires proof that a notice of intention to apply for an exemption – in the form of a City-prescribed flyer – was circulated to all residences abutting the subject location. While abutting neighbours will no longer need to provide formal consent, they can still submit comments or express concerns to the City, which will be considered during the exemption review. Compliance & Licensing Enforcement will continue to notify and consult Ward Councillors.
2. Introducing a new requirement for exemption applications to include photographic evidence – Staff recommend that applicants be required to submit a minimum of two photos that clearly depict the area surrounding the fence for which the exemption is being requested. This will support Enforcement in better understanding the context and assessing the request.
3. Introducing a provision to permit the Commissioner to request additional information – Staff recommend adding a provision that allows the Commissioner to request additional information beyond what is explicitly required in the By-law when reviewing an exemption application. This provision will provide flexibility in cases where further context is needed to make a fair and informed decision and will support consistent application of the By-law.
4. Introducing a requirement for written reasons when exemptions are refused – Staff recommend adding a provision requiring the Commissioner or designate to provide written reasons when an exemption request is denied. This will improve transparency and provide clarity to applicants regarding the rationale for the decision.

With amending provision 13(2)(e), staff also recommend repealing provision 13(7), which states:

“Notwithstanding that the authority to grant an exemption is delegated to the Commissioner, and that he or she may have already exercised the delegated power, Council shall retain the right to exercise the authority to grant or deny an exemption in accordance with the conditions set out in section 13(5) and 13(6) of this By-law.”

Provision 13(7) provides applicants the ability to have an incomplete application or decision considered by Council. This provision was necessary when certain application requirements – such as consent from abutting neighbours – could not be met. However, with the proposed amendment, this barrier would be lifted. Compliance & Licensing Enforcement would also establish a standardized process for reviewing exemption requests that includes input from the Ward Councillor, rather than involving Council as a whole.

Penalties

Staff will recommend, at a later date, introducing administrative penalties for fence violations related to height, material, and location. Although none of the municipalities reviewed currently impose administrative penalties for such infractions, Compliance & Licensing Enforcement maintains that introducing administrative penalties – mirroring the current Part I fine amount for the By-law – would provide a more streamlined and efficient means of enforcing the By-law for non-compliance without the need for court proceedings.

It is also recommended that, for a contravention of the By-law, the Part III Provincial Offence fine amount of not more than \$5,000 be amended to a minimum fine of \$500 and a maximum fine not exceeding \$100,000. This recommendation is supported by comparisons to other municipalities: Hamilton has a maximum fine of not more than \$10,000; Brampton has a fine of not more than \$25,000 under the Planning Act; and Toronto has a maximum fine of not more than \$100,000. Part III fine amounts are confirmed by the Court.

Staff are not recommending any changes to the Part I fine amount of \$305, plus a \$75 Victim Fine Surcharge. The fine is comparable to those in Toronto and Hamilton.

Financial Impact

There are no immediate financial impacts resulting from the recommendations in this report.

Conclusion

In response to Council’s direction, staff’s recommendations for amending the By-law are intended to improve clarity, enhance administrative and operational efficiency, and ensure alignment with comparable jurisdictions and related City by-laws.

Attachments

Appendix 1: Fence By-law Jurisdictional Research

Appendix 2: Draft by-law to amend Fence By-law 0397-1978



Raj Sheth, P.Eng, Commissioner of Community Services

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