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## **Fence By-law and Division Fence By-law Staff Report to Council**

Report Number: 2019-38

Department(s): Legislative Services

Author(s): Lesley Long, Supervisor of By-law Enforcement

Meeting Date: April 8, 2019

### **Recommendations**

1. That the report entitled Fence By-law and Division Fence By-law dated April 8, 2019 be received; and,
2. That Council repeal the Fence By-law 2000-63 as amended and Appointment of Cost of Division Fence By-law 1992- 91; and,
3. That Council adopt the proposed Fence By-law (**Attachment A**) and Cost of Division Fence By-law (**Attachment B**); and,
4. That the Fees and Charges By-law be amended to include the Fence fees (**Attachment D**); and,
5. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

### **Purpose**

The purpose of this report is to obtain Council approval with regards to adopting the new Fence By-law and Cost of Division Fence By-law.

### **Background**

[Information Report 2018-17](#) entitled Regulatory Review Update advised Council that the Fence By-law was identified by staff as requiring update. The current By-law has been in place since 2000, and requires updates to respond to changing community standards.

The new Fence By-law has been modernized to ensure that it continues to meet residents' needs, while also providing flexibility with respect to fence design.

## **Discussion**

### **Summary of Amendments to the draft Fence By-law (Attachment A)**

#### **Revising definitions to provide additional clarity**

Many definitions were either revised or added to ensure that the intent of the regulations is clear and aligned with the Town's Zoning By-law.

#### **Updating penalties for not complying with the By-law, in accordance with the offence provisions of the Municipal Act**

Sections 8 through 10 in the enclosed draft Fence By-law are the Town's standard enforcement sections, which ensure that staff have the ability to investigate and initiate legal proceedings, if required.

#### **Height Increase in Rear Yards, Interior Side Yards, and Exterior Side Yards**

The proposed changes to the height in the rear and interior side yards are intended to reduce the need for residence to apply for a fence variance.

Many municipalities have increased the height in the rear and exterior side yards to allow for more privacy for residents. Through staff's review, it was noted that the average height in rear yards was between 7 and 8 feet, and the interior side and exterior side yards averaged between 6 and 8 feet.

Staff have not recommended a height change to fences in the front yard. Accordingly, the height in a front yard is permitted to a maximum of 3 feet in height.

**Attachment C** illustrates two different scenarios: 1) two homes with one being a corner lot, and adjacent homes with different setbacks, and 2) two homes side by side on a street. The examples depict the varying maximum height for the yards on a residential lot, as well as where privacy screens may be erected in accordance with the By-law.

#### **Privacy Screens**

Privacy screens can be used to ensure additional privacy between neighbours. Over the last few years with homes in subdivisions being closer, residents have requested to install privacy screens on residential properties. The Town's existing Fence By-law does not address privacy screens and therefore staff have included these into the new by-law.

#### **Variance Process**

A variance can be applied for when a person wishes to exceed the maximum allowable height for a fence. Currently, the fence variance process is completed through the Planning and Building Departments. Over the last term of Council there were 14

variances regarding fence heights. The new proposed variance process would mean that Legislative Services would be responsible for processing these requests.

Should an applicant be dissatisfied with the outcome of their variance application, they may appeal the decision to the Town's Appeal Committee. The Appeal Committee's decision is final and binding.

The fees associated with a variance application are included as **Attachment D**.

## **Line Fences Act**

The Line Fences Act is the provincial legislation that governs fence disputes and the division of costs in Ontario if a municipality does not have a By-law that addresses such matters.

Should the Town stay in the Line Fences Act, it would mean that any time a resident had a dispute about a boundary fence they would have to apply for a fence viewer to attend at the properties to decide on the dispute. The provincial Line Fences Act prescribes a process for dealing with the boundary fence disputes.

Members of the Town's Appeal Committee act as fence viewers. Staff are responsible for accepting applications under the Line Fences Act, determining whether the Act is applicable, arranging the fence viewing appointment and hearing, sending out formal notices to neighbours and paying the fence viewers. The cost of the fence viewing process is typically born entirely by the applicant.

Many municipalities have exercised their authority under the Municipal Act Section 98 (1) (2) to opt out of the Line Fences Act. This Act is one of Ontario's oldest pieces of legislation and was originally put in place in 1834 for residents to deal with disputes about boundary fence maintenance on rural or agricultural lands. Typically, these residents would have a significant amount of land and many kilometres of fencing that protected livestock. The Line Fences Act was not intended for urban municipalities where most fences are short and do not manage livestock. Section 98 (1) (2) of the Municipal Act, permits the Town to opt out of the Line Fences Act, with exception of section 20, for all or parts of Newmarket. Section 20 of the Line Fences Act sets out the fencing responsibilities of property owners adjacent to a former rail line (e.g., CN Rail) in locations where farming business is carried out on the adjoining land. Staff are not aware of any examples of property that would classify as required under section 20 of the Line Fences Act in Newmarket.

## **Division Fence By-law - Determination of costs of a fence between property owners (Attachment B)**

One of the requirements of opting out of the Line Fences Act is that the municipality must adopt a by-law to provide residents with a guide on how the cost of a fence is to be divided amongst property owners.

This by-law provides a tool and mechanism for a property owner to recover the costs of a fence that has been erected or repaired. Any such disputes about the division of costs would be between property owners, and they would need to pursue the matter through a civil process.

## **Public Consultation**

### **Survey on HeyNewmarket**

A survey was conducted on HeyNewmarket from March 6 to March 22. The following three questions were posed to the community.

#### **Question 1**

Do you want the fence height in Newmarket increased from 6 feet to 7 feet for rear fences?

71% agreed to an increased in height, 25% were not in favour, and 3.6% were unsure.

#### **Question 2**

Would you be interested to have privacy screens in residential zones added to Newmarket's Fence By-law?

60% were in favour of privacy screens and 40% were unsure.

#### **Question 3**

Do you want to see the fence height increase to 6 feet for interior side fences?

100% of individuals who completed this question were in favour of the height increase.

### **Public Information Centre Held March 7, 2019**

A Public Information Centre (PIC) was held on March 7, 2019 to obtain feedback from the public on the new regulations related to the new draft Fence by-law.

There were no concerns raised at the drop-in session from resident to the proposed changes to the draft Fence By-law the feedback was well received.

## **Conclusion**

Upon Council approval of the draft Fence By-law and Cost of Division Fence By-law, staff will be updating the website regarding the new process when dealing with boundary fence disputes as well as providing clear visual information for staff to use to communicate to the public about the By-law.

## **Business Plan and Strategic Plan Linkages**

This report relates to the "Well Equipped and managed" link of the Town's community vision implementing policy and processes that reflect sound, accountable governance.

## **Consultation**

On March 7, 2019 a Public Information Centre was held to provide an overview of the key components of the draft Fence By-law and Division Fence By-law and to provide an opportunity to receive public input there were approximately 25 people in attendance.

On March 7, 2019 to March 22, 2019 a survey was posted on HeyNewmarket to provide another opportunity for the public to engage in the proposed draft Fence By-law.

This Fence By-law was prepared with input from the Legal, Planning and Legislative Services. Information was also gathered from the Cities of Vaughan, Waterloo, London, and Toronto.

## **Human Resource Considerations**

Not applicable to this report.

## **Budget Impact**

Not applicable to this report.

## **Attachments**

**Attachment A** - Draft Fence By-law

**Attachment B** – Draft Division Fence By-law

**Attachment C** – Diagram Showing Proposed Heights

**Attachment D** - Amendments to 2019 Fees and Charges By-law

## **Approval**

Kiran Saini, Acting Director of Legislative Services/Town Clerk

Legislative Services

## **Contact**

For more information on this report, contact Lesley Long, Supervisor of By-law Enforcement [llong@newmarket.ca](mailto:llong@newmarket.ca).