CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Parking and By-law Services Division

TO: Chair and Members
Economic Development and Planning Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: April 6, 2010

SUBJECT/REPORT NO:
Establishing a Fence By-Law for the City of Hamilton (PED10084) (City Wide)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development Department

PREPARED BY:
Marty Hazell  905-546-2424  Ext 4588
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SIGNATURE:

RECOMMENDATION:

(a) That the draft Hamilton Fence By-law, attached as Appendix “A” to Report PED10084, which has been prepared in a form satisfactory to the City Solicitor, be passed.

(b) That, subject to a Hamilton Fence By-law being enacted, the following Municipal Act fence by-laws be repealed: By-law No. 82-82 of the Town of Ancaster, By-law No. 3823-89 of the Town of Dundas, By-law No. 96-27-F of the Town of Flamborough and By-law No. 4054-94 of the City of Stoney Creek.

(c) That the charge for any cost incurred when the City exercises its authority to inspect under s. 436(2) of the Municipal Act, 2001, as set out in paragraph 6(5) of the draft Hamilton Fence By-law, attached as Appendix “A” to Report PED10084, be approved and added to the 2010 User Fees and Charges By-law when that by-law is enacted by City Council upon completion of the budget process.

(d) That following final approval of the new Hamilton Fence By-law under the Municipal Act, that the Department of Planning and Economic Development be directed to arrange for a public meeting under the Planning Act to amend all
existing zoning by-laws, as necessary to delete all references to fence regulations contained in such zoning by-laws that are redundant with the new Fence By-law.

EXECUTIVE SUMMARY

At present, in the amalgamated City of Hamilton there are a number of different by-laws regulating fences; some Municipal Act fence by-laws and others zoning by-laws. These various by-laws contain inconsistent regulations and penalties respecting fences. Accordingly, it would be beneficial from both an administrative and an enforcement point of view to harmonize the regulations and penalties, and to enact a Fence By-law which applies consistently to the entire City. To achieve total consistency, it will also be necessary to amend any zoning by-laws that contain regulations for fences by deleting provisions governing the erection and placement of fences that are redundant as a result of the new Fence By-law. Zoning regulations that require fencing, for example, for screening between uses will be retained. A separate, future public meeting will be required for these zoning by-law amendments.

Alternatives for Consideration – N/A

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial/Staffing: N/A

Legal: Subsection 10(1) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting structures, including fences and signs.

HISTORICAL BACKGROUND (Chronology of events)

As a result of the amalgamation of the former municipalities of the Town of Ancaster, the Town of Dundas, the Town of Flamborough, the Township of Glanbrook, the City of Hamilton and the City of Stoney Creek, pursuant to the City of Hamilton Act, 1999, there are currently eight separate by-laws regulating fences, as follows:

- City of Hamilton Zoning By-law 6593
- Town of Ancaster Fence By-law 82-82
- Town of Dundas Zoning By-law 3581-86
- Town of Dundas By-law 3823-89
- Town of Glanbrook Zoning By-law 464
- Town of Flamborough Zoning By-law 90-145-Z
- Town of Flamborough By-law 96-27-F
- Stoney Creek Fence By-law 4054-94

Staff of the Strategic Services/Special Projects Division have been working on the amalgamation of the six former municipalities’ zoning by-laws. The proposed new
comprehensive zoning by-law will no longer regulate fences as this is now a Municipal Act matter. Therefore, a stand-alone Fence By-law is necessary and appropriate.

**POLICY IMPLICATIONS**

Fences are currently regulated through zoning by-laws or Municipal Act fence by-laws of the former area municipalities. Practice is to remove the provisions regulating signs and fences from zoning by-laws and to include them in Municipal Act by-laws.

**RELEVANT CONSULTATION**

Planning, Building Services, Legal Services and Finance were consulted in the preparation of this report.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

As detailed in Appendix "B" to Report PED10084, each existing by-law regulates fences differently and there is inconsistency in the heights permitted with maximum heights ranging from 1.83 (6 feet) to 2.0 meters (6.56 feet) for residential and 2.44 meters (8 feet) to 3.05 meters (9.84 feet) in industrial, commercial, and/or institutional zones.

The proposed harmonized Fence By-Law as detailed in Appendix “A” to Report PED10084 provides for consistent regulation of fences throughout the amalgamated City by:

- limiting the height of a fence from the adjacent finished ground level in any zone to 2.0 metres (6.56 feet), except in an industrial zone where the maximum height is 3.0 metres (9.84 feet)

- prohibiting fences located so as to obstruct a parking space required under the City’s zoning by-laws

- limiting the height of a fence to a maximum of 0.9 metres (2.95 feet) when located within a corner visibility triangle or driveway visibility triangle and within 3.0 metres (9.84 feet) from the street line

- limiting the height of a fence when it is located on a deck or elevated platform to 2.4 metres (7.87 feet) provided the location of deck or platform meets the setback requirements
- providing provisions for a gate, archways, decorative caps or structural posts to be 0.3 metres to 0.4 metres higher than the fence

- prohibiting residential lot fences to be constructed of sheet or corrugated metal

- prohibiting barbed wire except as on farms for the keeping of livestock, in an industrial or commercial zone, or facility owned or operated by any level of government or a utility provider and providing that the barbed wire is located 2.0 metres (6.56 feet) above the adjacent finished ground and projects inwards towards the area enclosed by the fence

- prohibiting fences which transmit an electric current except on a farm for the keeping of livestock and provided such electric current does not exceed 120 volts at .05 amps

- prohibiting fences on City property without the prior permission of the City

- prohibiting fences that are hazardous to persons or property

- deeming fences that complied with applicable by-laws when they were built to comply with the proposed by-law so long as such fence continues to be the same height, length, and width and comprised of the same material.

- requiring fences built when no fence regulations were in force to comply with the proposed by-law

- deeming a fence maintained as required in an agreement entered with the City under the Planning Act to comply with this proposed fence by-law

- deeming a fence, including a fence described as a privacy screen, which is maintained as required by another City by-law, except a City zoning by-law, to comply with this proposed by-law

- providing for consistent administrative and enforcement measures

- providing clear direction to a person or persons who are in violation as to the remedy to bring their property into compliance

- providing enforcement tools such as undertaking the work and adding the costs to the tax roll or court proceedings if a person or person fails to comply with an order to do the work

- providing for the City to charge for any costs incurred as a result of the City exercising its authority to inspect under paragraph 6(4)(d)
ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Healthy Community

• Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix “A” to Report PED10084 - Draft Fence By-law
Appendix “B” to Report PED10084 - Zoning and Fence By-law Regulations

MH/CV/dt
CITY OF HAMILTON
BY-LAW NO. 10- XXX
FENCE BY-LAW

Being a by-law to regulate fences and to repeal By-law No. 82-82 of the Town of Ancaster, By-law No. 3823-89 of the Town of Dundas, By-law No. 96-27-F of the Town of Flamborough and By-law No. 4054-94 of the City of Stoney Creek.

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 10 of subsection 10(2) authorizes by-laws respecting fences;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1. This By-law may be referred to as the “Fence By-law” or the “Hamilton Fence By-law”.

DEFINITIONS

2(1) In this By-law:
“building” means a structure, whether permanent or temporary, with walls or a roof or part thereof, used or intended to be used for shelter, accommodation or enclosure of persons, animals, goods or chattels;

“City” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

“corner lot” means:

(a) a lot situated at the intersection of two or more streets or a lot abutting on one or more parts of the same street where such intersections have an angle of intersection of 135 degrees or less; or

(b) a lot located on the curve of a street where the angle of intersection of the projected tangents of the street line does not exceed 135 degrees;

“corner visibility triangle” means a triangular area formed within a corner lot by the intersecting street lines or the projections thereof and a straight line connecting them 5.4 m from their point of intersection;

“driveway visibility triangle” means a triangular area formed by the intersection of the lateral limit of the travelled portion of the driveway and the street line or the projections thereof and a straight line connect them 2.7m from their point of intersection;

“farm” means an agricultural operation as defined in the Farming and Food Production Protection Act, 1998 and includes such an operation that is not carried on with the expectation of gain but otherwise meets the definition in that Act;

“fence” includes:

(a) a railing, wall, line of posts, wire, gate, boards, pickets, latticework, or any combination thereof, or other similar erection used to enclose or divide in whole or in part a lot, to establish a lot line or to provide privacy; and

(b) a hedge or grouping of shrubs used for the same purpose located in a corner visibility triangle or a driveway visibility triangle or within 3.0m of a street line;

“height”, unless otherwise defined in this By-law, means the vertical distance measured between the finished ground adjacent to a fence and the highest point of the fence, provided that where a fence is located on top of a retaining wall, “height” means the vertical distance measured between the top of the retaining wall and the highest point of the fence;

“lot” means a parcel of land which can be legally conveyed pursuant to the provisions of the Planning Act;

“lot line” means the boundary of a lot including the vertical projection thereof;
“maintain” includes “have”, “construct” or “repair”;

“officer” means a person appointed by the City of Hamilton or assigned by the Senior Director to enforce this By-law;

“Senior Director” means the City’s Senior Director of Parking and By-law Services and his or her designate or successor;

“street” means a public highway or road allowance;

“street line” means any lot line that divides a lot from a street; and

“zone” means any land use zone established in the zoning by-laws of the City and passed under the Planning Act or any predecessor or successor Act.

**PROHIBITIONS**

3(1) No person shall maintain or permit to be maintained a fence that does not comply with the provisions of this By-law.

(2) No person shall maintain or permit to be maintained a fence:

(a) exceeding a height of 2.0m on a lot in any zone except an industrial zone;

(b) exceeding a height of 3.0m on a lot in an industrial zone;

(c) located so as to obstruct a parking space required under the City’s zoning by-laws; or

(d) exceeding a height of 0.9m and located within:

   (i) a corner visibility triangle or a driveway visibility triangle; or

   (ii) 3.0m of a front lot line.

(3) Despite subsection 2(a) but subject to subsections 2(c) and (d), a fence may be a maximum of 2.4m in height, or where the fence is located on a deck or elevated platform, 2.0m in height measured vertically from the deck or elevated platform to the highest point of the fence, provided that the fence is:

(a) located at least 1.2m from a side lot line, not including a side lot line where a common or party wall is located;

(b) located at least 3.0m from a rear lot line; and

(c) no more than 4.5m in length.
(4) Despite the limits on the height of a fence under subsections (2) and (3):  

(a) a gate may exceed such a limit by a maximum of 0.3m;  
(b) an archway forming an entrance to or exit may exceed such a limit by 0.4m;  
(c) a decorative cap or structural post may exceed such a limit by a maximum of 0.15 m.  

(5) No person shall maintain or permit to be maintained a fence comprised of sheet metal or corrugated metal panels on a lot in a residential zone.  

(6) No person shall maintain or permit to be maintained a fence comprised of barbed wire, except:  

(a) for a fence on a farm for the keeping of livestock;  
(b) on the top of a fence on a lot used for commercial or industrial purposes, provided that the barbed wire is a minimum of 2.0m above the adjacent finished ground and projects inwards towards the area enclosed by the fence; or  
(c) on the top of a fence erected for security reasons enclosing a facility owned or operated by any level of government or a utility provider, provided that the barbed wire is a minimum of 2.0m above the adjacent finished ground and projects inwards towards the area enclosed by the fence.  

(7) No person shall maintain or permit to be maintained a fence equipped to transmit an electric current, except for a fence on a farm for the keeping of livestock provided that the maximum electrical current does not exceed 120 volts at .05 amps and complies with all applicable legislation.  

(8) No person shall maintain or permit to be maintained a fence on City property without the prior permission of the City.  

(9) No person shall maintain or permit to be maintained a fence that is hazardous to persons or property.  

**EXISTING FENCES**  

4(1) Despite the provisions of this By-law, a fence that was in existence prior to [insert the date of enactment of this By-law] and was in compliance with the applicable fence regulations in force under other City by-laws at the time the fence came into existence, shall be deemed to comply with this By-law for so
long as such fence continues to be the same height, length and width and comprised of the same material.

(2) If no fence regulations applicable to a fence were in force under other City by-laws at the time the fence came into existence, then this By-law applies to the fence.

DIFFERENT TREATMENTS

5(1) Despite any provision of this By-law:

(a) a fence which is maintained as required in an agreement entered into with the City under sections 41 or 51 of the Planning Act or any plan approved by the City in accordance with those sections shall be deemed to comply with this by-law; or

(b) a fence, including a fence described as a privacy screen, which is maintained as required by another City by-law, except a City zoning by-law, shall be deemed to comply with this by-law.

ADMINISTRATION AND ENFORCEMENT

6(1) The Senior Director is assigned the responsibility of administering and enforcing this By-law and may so assign duties to such persons as necessary to carry out the provisions of this By-law.

(2) Persons appointed or assigned for the purposes of administering or enforcing this By-law are officers, have the authority to carry out the duties assigned to officers under this By-law, and may enforce the provisions of this By-law.

(3) An officer may enter on a lot at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

(a) this By-law;

(b) a direction or order made under this By-law; or

(c) a prohibition order made under s. 431 of the Municipal Act, 2001.

(4) An officer may, for the purposes of the inspection under subsection (3):

(a) require the production for inspection of documents or things relevant to the inspection;

(b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
(c) require information in writing or otherwise as required by the officer from any person concerning a matter related to the inspection; or

(d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

(5) Any cost incurred by the City in exercising its authority to inspect under paragraph (4)(d), including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the owner or occupant of the lot where the inspection takes place.

(6) An officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the Municipal Act, 2001 where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections 6(3) and 6(4).

(7) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the lot on which the contravention occurred to discontinue the contravening activity.

(8) An order under subsection (7) shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the lot on which the contravention occurred; and

(b) the date or dates by which there must be compliance with the order.

(9) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the lot on which the contravention occurred to do work to correct the contravention.

(10) An order under subsection (9) shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the lot on which the contravention occurred;

(b) the work to be completed; and

(c) the date or dates by which the work must be completed.

(11) An order to discontinue contravening activity made under subsection (7) or an order to do work made under subsection (9) may be served:
Appendix “A” to Report PED10084
Page 7 of 8

(a) by regular mail to the last known address of the owner or occupant of the lot where the contravention occurred;

(b) by an officer placing a placard containing the order in a conspicuous place on the lot where the contravention occurred; or

(c) personally on the owner or occupant of the lot where the contravention occurred.

(12) Where a person does not comply with a direction, an order or a requirement under this By-law to do a matter or thing, the Senior Director, with such assistance by others as may be required, may carry out such direction, order or requirement at the person’s expense.

(13) The City may recover the costs of doing a matter or thing under subsection (12) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent per year commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

(14) The Senior Director is authorized to give immediate effect to any direction, order or requirement where the costs of carrying out the direction, order or requirement do not exceed $10,000 and, where the costs do exceed $10,000, as the City’s Council may authorize.

(15) Every person who contravenes any provision of this By-law or fails to comply with an order made under this By-law is, upon conviction, guilty of an offence and is liable:

(a) on a first conviction, to a fine of not more than $10,000; and

(b) on any subsequent conviction, to a fine of not more than $25,000.

(16) Despite subsection (15), where the person convicted is a corporation:

(a) the maximum fine in paragraph (15)(a) is $50,000; and

(b) the maximum fine in paragraph (15)(b) is $100,000.

(17) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

TRANSITION, REPEAL, COMING INTO FORCE, ETC.

7(1) All measurements in this By-law are given the metric short form.
(2) If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

(3) All prosecutions and other enforcement processes commenced under By-law No. 82-82 of the Town of Ancaster, By-law No. 3823-89 of the Town of Dundas, By-law No. 96-27-F of the Town of Flamborough and By-law No. 4054-94 of the City of Stoney Creek, which have not been completed on the day this By-law comes into force shall be completed under those By-laws as if they had not been repealed.

(4) By-law No. 82-82 of the Town of Ancaster, By-law No. 3823-89 of the Town of Dundas, By-law No. 96-27-F of the Town of Flamborough and By-law No. 4054-94 of the City of Stoney Creek are repealed as of the day this By-law comes into force.

(5) This By-law comes into force on the date of its passing.

PASSED this day of , 2010

_________________________________  ____________________________
Fred Eisenberger
MAYOR     CITY CLERK
# Zoning and Fence By-Law Regulations

<table>
<thead>
<tr>
<th>Municipality</th>
<th>By-Law Number</th>
<th>Residential Fence Regulations</th>
<th>Industrial, Commercial, /institutional Fence Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Hamilton</td>
<td>Zoning By-Law No. 6593</td>
<td>Hedges, fences, walls may be erected or maintained to a height of not more than 2.0 metres (6.56 feet), but no such hedge, fence or wall shall be erected or maintained to a height of more than 0.8 metres (2.62 feet) within 9.0 metres (29.53 feet) of intersection of 2 or more streets.</td>
<td>Within the limits of a required yard in an industrial district, a hedge, fence or wall may be erected and maintained to a height of not more than 3.0 metres (9.84 feet).</td>
</tr>
<tr>
<td>Town of Ancaster</td>
<td>Fence By-Law No. 82-82</td>
<td>Height of a fence measured from a grade perpendicularly to the top of such fence shall not exceed 1.83 meters (6 feet) when located on single family/multiple family use property or separating single family/multiple family uses from other single family or multiple family uses.</td>
<td>• Height of a fence measured from a grade perpendicularly to the top of such fence shall not exceed 2.44 metres (8 feet) when separating single family uses or multiple family uses from commercial uses, institutional uses, industrial uses or agricultural uses.</td>
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<tr>
<td></td>
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<td>• 2.44 metres (8 feet) when located on institutional use property or separating institutional uses from other institutional uses, agricultural uses or highways</td>
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<td></td>
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<td>• 3.05 m (10 feet) when separating institutional uses from commercial uses or industrial uses</td>
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<tr>
<td>Town of Dundas</td>
<td>Zoning By-Law No. 3581-86</td>
<td>Fences, freestanding walls or similar structures are permitted subject to the following height requirement: - Maximum 1.9 metres, except for front yards where the maximum shall be 0.75 metres.</td>
<td>• Industrial Zones – Maximum 2.5 metres except in the front yards where the maximum shall be 0.75 metres.</td>
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<tr>
<td></td>
<td>A By-law to Permit Access To Adjoining Lands (Access to Neighbouring Lands for Repairs)</td>
<td>This by-law permits an owner or occupant of any building, fence or other structure and every agent or employee of every such owner or occupant may for</td>
<td>• Public Utilities Zone – Maximum 2.5 metres.</td>
</tr>
</tbody>
</table>
| Town of Glanbrook | Zoning By-Law No. 464 | Fences, free-standing walls or similar structures may be located in any yard subject to the following maximum height restriction:  
- **Residential Zones:**  
  - Solid Fence, maximum 1.8 metres (6 feet)  
  - Chain-Link Fence, maximum 2.4 metres (8 feet), except a maximum of 3 metres (10 feet) where fence is accessory to a tennis court  
- **Commercial and Industrial Zones – Maximum 3 metres (10 feet)**  
- **Institutional “I” Zone:**  
  - Solid Fence, maximum 1.8 metres (6 feet)  
  - Chain-Link Fence, maximum 3 metres (10 feet) |  
| --- | --- | --- |
| Town of Flamborough | Zoning By-Law No. 90-145-Z | A fence or wall may be located in any yard subject to the following provisions:  
- Maximum height shall be 2 metres.  
- Within any front yards, the maximum height within 6 metres of the front line shall be one metre; and,  
- Within any zone where a tennis court is located, the maximum height of a fence shall be 3 metres, provided that such a tennis court is not located in a required front or side yard. |  
This by-law describes fences that border town properties; it does not prescribe the height of a fence. |  
| A By-law to Regulate the Description of Fences Adjacent to Town Property By-law No. 96-27-F | Within any industrial zone, the maximum fence height shall be 3 metres. |
| City of Stoney Creek | Fence By-Law No. 4054-94 | No person shall erect, or cause to be erected in any yard on any land used for residential, institutional or commercial purposes, a fence which is higher than 2.0 metres above the effective ground level except within 4.5 metres of the nearest street line in a front yard on any land used for residential, institutional or commercial purposes.  
- A fence of closed construction or a hedge which is higher than 1.0 metre above effective ground level.  
- A fence of open construction which is higher than 1.5 metres above effective ground level. | No person shall erect or cause to be erected on any land used for industrial purposes, a fence which is higher than 3.0 metres above the effective ground level. |