## RECOMMENDATION

That the draft amendment to the Fence By-law No. 10-142 attached as Appendix A to Report PED100084(b), to allow maximum fence heights to be increased by .4 meters to prevent deer from entering properties likely to be affected by deer, which has been prepared in a form satisfactory to the City Solicitor, be passed.

## EXECUTIVE SUMMARY

In considering report PED10084 (Establishing a Fence By-Law for the City of Hamilton) the Economic Development and Planning Committee, on April 6, 2010, referred the report to the Agricultural and Rural Affairs Advisory Committee “for their consideration and input, with a specific request to comment on the potential of allowing 8 foot fences adjacent to open areas, where deer are common”.

Staff consulted with the ARAAC who support the recommendation to allow maximum fence heights to be increased by .4 meters to prevent deer from entering properties likely to be affected by deer.

**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)

On April 6, 2010 staff reported to the Economic Development and Planning Committee, in report PED10084, recommending a new Hamilton Fence By-Law. Committee referred the report to the Agricultural and Rural Affairs Advisory Committee (AR AAC) “for their consideration and input” generally and, specifically for “comment on the potential of allowing 8ft fences adjacent to open areas, where deer are common.”

Staff attended the April 22, 2010 ARAAC meeting and provided an overview of the proposed Fence By-law. Staff received the ARAAC’s input on several issues. However, the issue respecting fence heights for properties adjacent to open spaces, conservation areas, etc. required additional investigation.

On June 1, 2010, staff reported back to Committee, in report PED10084(a)), with a revised draft by-law which attended to the ARAAC Committee’s concerns, and advising that additional investigations were required to address fence heights adjacent to open spaces therefore, Committee, and subsequently City Council on June 9, 2010 approved the new Fence By-law, and staff were directed to “investigate in detail the suggestion to allow higher fences adjacent to open spaces, conservation areas etc. and to again consult with the Agricultural and Rural Affairs Advisory Committee before reporting back to the Economic Development and Planning Committee.”

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

The Strategic Services/Special Projects Division, Legal Services, Hamilton Conservation Authority and the Agricultural and Rural Affairs Advisory Committee were consulted in the preparation of this report.
ANALYSIS / RATIONALE FOR RECOMMENDATION
(include Performance Measurement/Benchmarking Data, if applicable)

Based on the information and research outlined below, staff decided to address this issue by recommending an amendment to the Fence By-law to permit maximum fence heights to be increased by .4 meters to prevent deer from entering properties likely to be affected by deer, and that such fences be constructed of not more than 4 horizontal lines of fencing wires or similar wire-like material not more than 1 centimeter in diameter. This type of fencing extension would not detract from the esthetics of the neighbourhood. The extension, as stated in the amendment, is only permitted to prevent deer from jumping over a fence and would not be permitted where deer are not present.

On October 21, 2010 staff attended the ARAAC meeting and presented the research and information set out below, as well as a draft fence by-law amendment with respect to deer fences, a copy of which is attached hereto as Appendix “A” to this report. The ARAAC passed a motion in supporting the proposed amendment.

The following is the detailed information and research which staff based their discussions with the ARAAC meeting on:

- staff reviewed literature and web-sites on "deer jumping behaviour" and fencing solutions including the Ministry of Agriculture Food & Rural Affairs (www.omafra.gov.on.ca), Transport Canada (www.tc.gc.ca/eng/) and McGregor Fencing Company (www.invisible-deer-fence.com), which conclude that:
  - deer have difficulty seeing how tall these fences are so they do not know how high they need to jump,
  - the top of deer fencing must be left visually undefined so it does not provide a target for the deer to jump over,
  - if the top of deer fencing is defined, for example by a 2 x 4 board, then the deer will know where the top is and will be more likely to jump the fence.

- according to the Hamilton Conservation Authority’s 2009 aerial deer census, which included an area encompassing the Dundas Valley, Ancaster, east Beverly, west Flamborough and a small area around the airport, the following areas had high wintering deer densities:
  - Dundas Valley (bounded by the CN Rail to the north, Paddy Greene Road to the west, Jerseyville Road to the south, and Old Ancaster Road to the east),
  - Iroquois Heights Conservation Area (bounded by Hwy 403, Scenic Drive, and Mohawk Road - Ancaster),
  - North Shore of Cootes Paradise (south of Olympic Drive, York Road - Dundas),
- Meadowlands Conservation Area (south of Meadowlands Power Centre, north of Garner Road between new Hwy 6 and Stonechurch - Ancaster),
- Tiffany Falls Conservation Area (bounded by Hwy 403 and Wilson Street / Main Street W – Ancaster).

- Staff reviewed whether or not higher fences should be permitted on lands adjacent to certain zones to prevent deer from jumping into properties. However, incorporating zones into the Fence By-law would be problematic and enforcement would be cumbersome because the amalgamated Zoning By-law is still incomplete and because of the number of zones involved (i.e. lands adjacent to natural/open spaces, lands adjacent to lands under Development Control and lands adjacent to lands under the jurisdiction of the Niagara Escarpment Commission) and the fact that deer range well beyond these zones, what lands to include as “adjacent” also presents difficulties.

In view of the above, it is recommended that the Fence By-Law be amended to allow property owners/occupants who have deer in their yards, even if it is infrequently, to put up an extension and exceed the maximum fence height by .4 meters wherever their property is located. The by-law already allows for extensions ranging up to .4 meters for gates, archways, decorative caps or structural posts on all properties as well as barbed wire on certain properties and so this is simply an addition to the existing list.

**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)

**Environmental Stewardship**

- Natural resources are protected and enhanced

**APPENDICES / SCHEDULES**

Appendix “A” to Report PED10084(b) – Draft By-law to amend the Fence By-Law No. 10-142

CV/dt
Attach.
CITY OF HAMILTON

BY-LAW NO. ____________

To Amend By-law No. 10-142, a By-law to Regulate Fences

WHEREAS Council enacted a by-law to regulate fences being City of Hamilton By-law No. 10-142;

AND WHEREAS this By-law provides for an amendment to City of Hamilton By-law No. 10-142;

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

1. Subsection 3(4) of By-law No. 10-142 is amended by adding following new paragraph after paragraph (c):

   (d) an extension to prevent deer from jumping over the fence may exceed such a limit by a maximum of 0.4m, provided that:

      (i) the extension, not including support structure, is constructed of not more than 4 horizontal lines of fencing wire or similar wire-like material; and

      (ii) each line of fencing wire or similar wire-like material is a maximum of 1cm in diameter.

2. This By-law comes into force on the day it is passed.

   PASSED this ___ day of ___________ , 20__ .

__________________________  _______________________
Mayor                      Rose Caterini
__________________________  _______________________
Clerk