

Authority: Item 1, Economic Development
and Planning Committee
Report 10-012 (PED10084(a))
CM: June 9, 2010

Bill No. 142

**CITY OF HAMILTON
BY-LAW NO. 10- 142**

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. 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;

“Director” means the City’s Director of Municipal Law Enforcement and his or her designate or successor;

“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 for the purposes of enclosing or dividing in whole or in part a lot, establishing a lot line or providing privacy; and
- (b) a hedge or grouping of shrubs used for the purposes listed in subsection (a) located in a corner visibility triangle or a driveway visibility triangle or within 3.0m of a street line,

but does not include:

- (c) any vegetation, including a hedge or grouping of shrubs used for the purposes listed in subsection (a), not located in a corner visibility triangle or a driveway visibility triangle or within 3.0m of a street line; or
- (d) a see-through screen erected to contain a recreational activity such as a chain-link fence erected around a tennis court;

“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 Director to enforce this By-law;

“**street**” means a public highway or road allowance having a minimum width of 12.0m;

“**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 or in the Niagara Escarpment Development Area except on a lot:
 - (i) in an industrial zone; or
 - (ii) used as a farm;
 - (b) exceeding a height of 3.0m on a lot:
 - (i) in an industrial zone; or
 - (ii) used as a farm;
 - (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 or in the Niagara Escarpment Development Control Area.
- (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 or the protection of livestock or crops from animals;
 - (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 or the protection of livestock or crops from animals provided that the fence meets the requirements of any applicable Canadian Standards Association Standard.
- (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 June 9, 2010 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 fence regulations under other City by-laws applicable to a fence were:
- (a) not in force at the time the fence came into existence; and
 - (b) in force before 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 that comes into existence on or after June 9, 2010, including a fence described as a privacy screen, which is maintained as required by another City by-law, except a City zoning by-law other than Zoning By-law 05-200, shall be deemed to comply with this By-law.

ADMINISTRATION AND ENFORCEMENT

- 6(1) The 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.

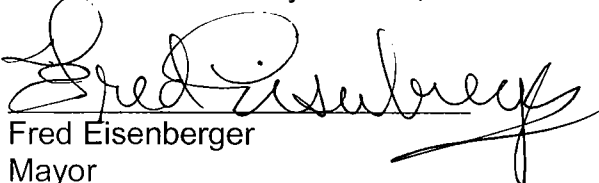
- (9) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the lot on which the contravention occurred to do work to correct the 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 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:
- (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 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 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 in 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 9th day of June, 2010 .


Fred Eisenberger
Mayor


Rose Caterini
City Clerk