



100 John West Way
Aurora, Ontario
L4G 6J1
(905) 727-3123
aurora.ca

Town of Aurora

General Committee Report

No. CS20-025

Subject: Modernized Fence By-law

Prepared by: Alexander Wray – Manager Bylaw Services

Department: Corporate Services

Date: December 1, 2020

Recommendation

1. That Report No. CS20-025 be received; and
2. That a new Fence By-law be brought forth and enacted at a future Council meeting to repeal and replace the current Fence By-law No. 4753.05.P; and
3. That an amendment to the Fees and Charges By-law be brought forward to a future Council meeting to implement fees associated with a fence variance process; and
4. That an amendment to the Aurora Appeal Tribunal By-law be brought forward to a future Council meeting for enactment.

Executive Summary

The purpose of this report is to seek Council's approval to implement a new Fence By-law. The proposed Fence By-law will modernize existing legislation, introduce a variance process with delegated authority to the Director of Corporate Services, implement Order and remediation provisions as recommended by the Region of York – Prosecution Services Division, and update the Aurora Appeal Tribunal By-law to provide for the ability to consider fence variance appeals.

- Staff are recommending the implementation of a variance process with delegated authority to the Director of Corporate Services allowing for flexibility when warranted.
- Addition of Order and remediation provisions to address non-compliance provides staff with necessary enforcement tools.

- Amendments of other by-laws will be required to support the enactment of the proposed by-law.

Background

As part of a continued review of the Town's current by-law legislation with the objective to modernize the Town's by-laws to meet community needs, Bylaw Services, in partnership with the Region of York – Prosecutions have identified that the existing Fence By-law is outdated and does not address current community expectations and legislative requirements.

The proposed Fence By-law will be inclusive of past amendments while introducing variance provisions, enforcement tools, delegated authority to the Director of Corporate Services, and the ability to remediate non-compliance. In addition, the Aurora Appeal Tribunal By-law needs to be updated to give the Tribunal authority to administer appeals with respect to fence variance requests.

Analysis

Staff are recommending the implementation of a variance process with delegated authority to the Director of Corporate Services allowing for flexibility when warranted.

The proposed Fence By-law would introduce a variance process for fences that do not comply with requirements of the by-law. The variance process would grant delegated authority to the Director of Corporate Services to permit for new and existing fence variances by considering the following criteria:

- would the variance meet the general intent of the Fence By-law;
- would the variance be in keeping with the surrounding area and whether it would have negative impacts on adjacent residents;
- any special circumstances and whether the strict application of the by-law provisions would cause unnecessary difficulty or hardship;
- Whether the approval of the variance would result in impacts to the health, safety, or welfare of the public.

The Director will make the decision based on the documentation submitted by the applicant and any investigations deemed appropriate by the Director or Town staff. If the Director of Corporate Services refuses a variance request and the applicant wishes to dispute the Director's decision, the applicant may request a hearing before the Aurora Appeals Tribunal. The decision of the Aurora Appeals Tribunal would be final, binding and would not be subject to any further appeal or a requirement for Council approval. Bylaw Services is proposing a non-refundable variance fee of \$250.00, for an initial request to the Director of Corporate Services, and a fee of \$450 for an appeal of the Director's decision to the Aurora Appeal Tribunal. The below chart illustrates how neighbouring municipalities address non-compliant fences.

	Fence Exemption Process	Delegated Authority	Authority over Exemption Requests	Exemption/Variance Fee
Town of East Gwillimbury	Yes	No	Appeals Committee	\$326.00
City of Richmond Hill	Yes	No	Council	\$230.00
City of Vaughan	Yes	No	Council	\$356.00
City of Markham	Yes	Yes	Delegated – Manager of Bylaw Services	None
Town of Newmarket	Yes	Yes	Delegated – Director; Appeals Tribunal	\$287.00 for application and \$574.00 to appeal to Tribunal

Addition of Order and remediation provisions to address non-compliance provides staff with the necessary enforcement tools.

The current Fence By-law leaves the Town with few options to achieve compliance other than voluntary or prosecution. At the recommendation of the Regional Municipality of York's Prosecution Services Division, Bylaw Services has introduced a provision in the new by-law that would allow Officers to write an Order to Comply and remediate a violation should all other options prove unsuccessful. Additionally, remediation options will aid staff in addressing issues that pose health and safety concerns (sightline obstructions, deterioration, etc.).

As part of the implementation of the new Fence By-law, amendments to the Fee's and Charges By-law and Aurora Appeals Tribunal By-law will be required.

The proposed changes to the Fee's and Charges By-law will allow an appropriate fee structure to be implemented.

The Aurora Appeals Tribunal By-law will require an update to grant the Appeals Tribunal authority to adjudicate matters relating to the new Fence By-law. In case a decision of the Director is appealed, the Tribunal will consider the same factors as the Director is required to take into consideration and issue a decision following a formal hearing. Additional minor updates will also be made to Appeals Tribunal By-law as a matter of housekeeping.

Advisory Committee Review

None.

Legal Considerations

The proposed Fence By-law provides new powers and authority with respect to managing fences in Aurora. The Director of Corporate Services will be granted authority to permit certain variances from by-law requirements, taking into account the factors described in this report. There will also be an appeal mechanism that will permit those who request a variance to have a hearing before the Aurora Appeal Tribunal body. The variance process will permit applicants to have their requests reviewed by an independent body and allow an opportunity for an oral hearing. The decision of the Aurora Appeal Tribunal will not be subject to any further appeal and will not require

authorization from Council. In cases of an existing non-compliance, where no variance is granted, the owners of such fences will be required to bring the fence into compliance. In order to facilitate the appeal process through the Aurora Appeal Tribunal, adjustments have to be made to grant the Tribunal powers to process such applications. The Aurora Appeal Tribunal is created and governed pursuant to Town by-laws and therefore can only act with respect to matters specifically assigned to it by Council. The Aurora Appeal Tribunal By-law will also undergo some housekeeping adjustments. Without the proposed introduction of powers to consider variations, any fence variation requests would need to be considered by Council.

Further, the proposed Fence by-law will grant staff additional powers to remedy non-compliance. The by-law sets out regulations with respect to the issuance of orders and circumstances in which remedial action can be taken by staff. In order for staff to be able to take remedial action in the event of non-compliance, such authority needs to be granted pursuant to by-law. Without the proposed updates to the by-law, staff will continue to be limited with respect to enforcement tools.

Financial Implications

Persons who are found guilty of an offence under the by-law will upon conviction be liable to a fine provided for under the Provincial Offences Act. If approved, all noted fee amendments would need to be made to the Town's current Fees and Charges bylaw. The updated bylaw schedules would be brought to Council for its review and approval at a future date.

Communications Considerations

The Town of Aurora will use 'Inform' as the level of engagement for this project. There are five different levels of community engagement to consider, with each level providing the community more involvement in the decision making process. These levels are: Inform, Consult, Involve, Collaborate and Empower. Examples of each can be found in the Community Engagement Policy. These options are based on the International Association of Public Participation (IAP2) Spectrum and assist in establishing guidelines for clearly communicating with our public and managing community engagement. In order to inform, Corporate Communications will create an education campaign using social media, the Town's Notice Board, website to let residents know about the new bylaw.

Link to Strategic Plan

The proposed Fence By-law supports the Strategic Plan Goal of Supporting an Exceptional Quality of Life for all.

Alternative(s) to the Recommendation

1. Council direct staff to not bring forward a new Fence By-law and Appeals Tribunal By-law for enactment, creating inefficiencies with respect to enforcement and lack of flexibility for residents.

Conclusions

For the reasons outlined in this report, Staff recommend that the new Fence By-law and Aurora Appeal Tribunal By-law be approved as presented at a future Council meeting.

Attachments

Attachment #1 – Fence By-law Draft

Previous Reports

Report CS20-001 – Fence By-law Exemption Request – 203 St. John’s Sideroad West, General Committee Report – June 2, 2020

Pre-submission Review

Agenda Management Team review on November 11, 2020

Approvals

Approved by Techa Van Leeuwen, Director, Corporate Services

Approved by Doug Nadorozny, Chief Administrative Officer