

Town of Whitby Staff Report

whitby.civicweb.net



Report Title: Proposed New Fence By-law

Report to: Committee of the Whole

Date of meeting: June 9, 2025

Report Number: LS-08-25

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Frank Santaguida, Commissioner of
Legal and Enforcement Services/Town
Solicitor

Acknowledged by M. Gaskell, Chief Administrative Officer

For additional information, contact:

Kate Novia, Supervisor of By-law and
Animal Services

1. Recommendation:

1. That report LS-08-25 be received for information;
2. That the proposed new Fence By-law, be brought forward to Council on October 6, 2025 for consideration and adoption, substantially in accordance with Attachment #1 to this Report;.
3. That Council grant delegated authority for consideration of minor height exemptions (up to 10%) to the Commissioner of Legal and Enforcement Services/Town Solicitor;
4. That Council delegate the authority for consideration of additional height exemptions to the Municipal Licensing and Standards Committee in accordance with the Fence By-law Exemption Process outlined in Schedule "A" of the proposed New Fence By-law;
5. That the Clerk be directed to amend the Terms of Reference for the Municipal Licensing and Standards Committee to include consideration of Fence By-law Exemptions;

6. That staff be directed to bring forward a By-law to amend Fees and Charges By-law # 7220-17, as amended, for Minor Fence Height Exemptions and to add a new tier fee for Fence By-law Exemptions as noted in Section 5 of Report LS 08-25; and,
7. That item number GG-0038 be removed from the New and Unfinished Business List.

2. Highlights:

- The current Town of Whitby Fence By-law ## 4394-99 was enacted in 1999 and has been amended six times since its adoption. Through application of the current Fence By-law, the need to amend the Towns fence regulations has come to the forefront.
- The Towns' current Fence By-law lacks modern safety provisions and creates limitations for residents who wish to construct more modern pool enclosures.
- A new Fence By-law is required to respond to changing community needs.
- Provisions have been added to the new fence by-law to regulate privacy screens and safety netting. These include regulations related to golf course safety nets and requirements for their ongoing maintenance. Defined terms have been expanded to promote greater understanding.
- Updates completed to ensure consistency with applicable zoning regulations that are applicable to fences.
- Permit applications regulations pertaining to permit expiry in the event permits are obtained but action not taken to commence installation of pool.
- The proposed by-law contains a tiered exemption process to permit residents to seek variance from the permitted maximum heights.
- The proposed Fence By-law contains provisions of enforcement for the Administrative Penalties System.
- Enforcement provisions enhanced allowing for Orders to be issued for fences found in non-compliance.

3. Background:

The Fence By-law regulates the maximum height for fences and establishes specific standards for fences surrounding swimming pools. The current Fence By-law has not had a comprehensive review since it was passed in 1999 and as such, the language and provisions fail to adequately address current issues in the community, such as:

- Limited fence exemption process
- Lack of privacy fence provisions

- Non-existent provisions for modern fencing materials, such as glass or horizontal fencing.
- Sightline concerns created by front yard fences
- Use of snow fences on residential properties
- Lack of provisions relating to timeframes for pool permits to be completed

The proposed new Fence By-law (Attachment #1) will effectively address the above community needs, discrepancies with provincial legislation, safety concerns and will allow for the use of modern fence materials when constructing pool enclosures.

4. Discussion:

Fence By-law concerns, updates, and modernization

As noted, the current by-law has been amended on several occasions and staff and residents have identified issues that cannot be effectively addressed due to the current provisions. These issues include,

- Addressing safety concerns through use of pool enclosure materials
- Limited exemption authorities
- A lack of provisions that establish regulations pertaining to swim spa's.
- Outdated provisions related to pool enclosures;
- Discrepancies between Province regulations in relation to pool enclosure / divisional fencing adjacent Town of Whitby properties;
- A lack of privacy screen provisions which may assist with neighborly disputes and pools adjacent Town of Whitby Parks;
- Provisions to protect Heritage attributes;
- Lack of enforcement provisions to address non-compliance matters

The proposed updated fence by-law attached to this report encompasses provisions which seek to address the above noted concerns and are reflective of modern safety standards and aligns with the adaptability our community has expressed they wish to see. The proposed new by-law contains the following provisions:

1. A section which outlines Orders to address non-compliance matters.
2. A maintenance section to establish general maintenance standards.
3. Provisions which protect heritage features and create municipal by-law contraventions for not obtaining permits.
4. Provisions to better regulate the use of privacy screens and address related concerns.
5. Established tiered exemption authorities to allow residents to seek exemptions maximum height provisions contained in the Fence By-law.
6. Regulations to better control sight lines obstructions caused by front yard fences;

7. Addition of regulations permitting the use of various types fence materials
8. Regulation pertaining to the use of snow fencing and a standard timeline when it can be used; and
9. Restrictions on pool permit applications which include expiry of permits.

The regulations of the new By-law are intended to align with those of our neighbouring municipalities to provide relative consistency between Whitby and its neighbours.

Fence By-law Exemptions and Appeals

The proposed New Fence By-law contains a tiered exemption section offering greater ability for residents to seek maximum height exemptions. Staff recommend that delegated authority for minor fence exemptions (up to 10%, or a maximum height of 2.2 metres) continue with the Commissioner of Legal and Enforcement Services. Where a resident or business seeks a fence height variance greater than 2.2 metres are directed to the Town's Municipal Licensing and Standards Committee. The decision of the Municipal Licensing and Standards Committee will be final and binding.

Based on the complexity to be reviewed and reviewing Council's comments, Staff recommend a \$350.00 fee for minor fence exemptions and a \$500.00 for exemption requests which are to be reviewed by the Town's Municipal Licensing and Standards Committee. Staff recommend an overall cap of 3 metres or approximately 9 feet 10 inches maximum height be delegated to the Committee.

In addition to the above, staff recommend the Fence By-law Exemption process outlined in Schedule "A" of the proposed New Fence By-law for a fair and efficient exemption process.

5. Financial Considerations:

The financial impacts of the new Fence By-law Exemption process are limited as only five to ten exemption requests are received each year. However, the amount of Staff time required to prepare for and consider an exemption request is significant. Requests for exemptions above a 10% variance are currently heard by Council at Committee of the Whole and Council meetings, resulting in Members of Council and senior Staff engaging in lengthy hearings.

The new Fence By-law Exemption Process will create efficiencies by removing Council as the adjudicating body for these matters and delegating authority for hearing exemption requests to the Municipal Licensing and Standards Committee.

Members of the Municipal Licensing and Standards Committee receive remuneration of \$100 per meeting and the Committee consists of five citizen members, meaning that total remuneration per meeting is \$500. The Committee is scheduled to meet on an as needed basis, and Staff attempt to coordinate so that multiple files can be considered by the Committee at the same meeting. Based on the comments received by Council at a previous consideration of the Fence By-law, staff have reduced the application fees for a fence height exemption. Establishing a two-tier Fence By-law Exemption application fee of \$350 and \$500 provides for a better recovery of Town costs (e.g. offsets the remuneration paid to Committee Members and helps to offset Staff time involved in administering hearings, circulating notices to adjacent property owners regarding exemption requests, and preparing briefing documents for the Committee's review).

Based on the proposed delegation of authority recommended in this report, the number of applications requiring Council consideration is expected to be greatly reduced. In the rare instance of a fence exemption for a fence in excess of 3 metres is requested, it is recommended that the fee be set at \$2,500 to recover the costs of additional resources to review any necessary engineering reports, for staff to review the application and draft a Council report, and for relevant staff attend the Committee and Council meetings.

6. Communication and Public Engagement:

The implementation of the new by-law will be shared with the public through updates to our online resources, as well as through public communications shared through our communications team.

7. Input from Departments/Sources:

The Parks Division of Operational Services, the Heritage and Planning Division of the Towns Planning and Development Department were consulted and reviewed the recommendations contained.

8. Strategic Priorities:

The recommendations contained in this report align with Council goals to make neighborhoods safer and stay connected with the community. The new fence by-law encompasses modern safety standards while balancing the communities expressed desire to incorporate more modern fence designs.

9. Attachments:

Attachment # 1- Proposed New Fence By-law