

TO:	CHAIR AND MEMBERS COMMUNITY & PROTECTIVE SERVICES COMMITTEE APRIL 22, 2013
FROM:	G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	FENCE BY-LAW AMENDMENTS

RECOMMENDATION

That, on the recommendation of the Managing Director, Development and Compliance Services & Chief Building Official the attached proposed By-law **BE INTRODUCED** at the Municipal Council meeting of, April 30th, 2013 to amend the Fence By-law, PS-6, to for the purposes of addressing public safety.

BACKGROUND

Recently, Municipal Law Enforcement Officers have encountered a number of situations related to the fence by-law that leave way to potential injury or mishaps to the public. Fencing, including hedges, in the visibility and corner triangles are “Deemed to Comply” when they existed prior to the passing of the current by-law. This gives way to obstructions that potentially interfere with sight lines and visibility of vehicle drivers accessing, or on the public right of way or road allowance.

ANALYSIS

Within the previous Fence By-law PS-1, which was replaced by the current Fence By-law PS-6, a fence was defined as;

“fence” shall mean any fence, wall (other than a wall of a building), gate or structure which separates or purports to separate land not under common ownership.

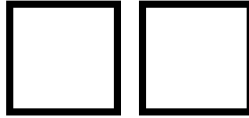
This definition did not include hedges or groupings of shrubs and therefore any hedges or groupings of shrubs were not limited in height.

The current Fence By-law PS-6 was enacted on June 9th, 2008 and is enforced by Municipal Law Enforcement Services on a complaint basis. The Definitions contained in PS-6 pertinent to this analysis include;

“corner visibility triangle” means a triangular area formed within a corner lot by the intersecting lot lines abutting the streets or the projections thereof and a straight line connecting them 5.4 meters (17.7 feet) 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 a driveway and the street line or sidewalk (if existing) or the projections thereof, and a straight line connecting them 2.7 metres (8.9 feet) from their point of intersection;

“fence” includes a railing, wall, line of posts, wire, gate, boards, pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, to establish a property boundary, or to provide privacy; and includes any hedge or grouping of shrubs used for the same purpose located in corner visibility triangle or driveway visibility triangle;



It should be noted that the current definition of a fence in PS-6 now includes hedges or grouping of shrubs. Additionally, Part 3 of PS-6 contains the following provisions respecting existing fences;

3.1 Fences - Deemed to Comply

Notwithstanding the provisions of this by-law, any fence that is in existence prior to the date of the enactment of this by-law and in compliance with other applicable regulations including City of London by-laws, shall be deemed to comply with this by-law and may be maintained with the same material, height and dimensions as previously existed including any repair work that may be done to such fence.

As such, any fence that existed prior to the date of the enactment of the current Fence By-law PS-6 and in compliance with other applicable regulations, including City of London by-laws, shall be “Deemed to Comply” with this by-law and may be maintained with the same material, height, and dimensions as previously existed including any repair work that may be done to such fence.

Presently when a Municipal Law Enforcement Officer responds to a complaint of a fence within a corner or visibility triangle and arrives on site to find a hedge or grouping of shrubs that exceeds the current height regulation of 0.9 metres they may be presented with a challenge by the property owner. The property owner may indicate that the hedge or grouping of shrubs existed prior to the passing of the current by-law and therefore is “Deemed to Comply”, as the definition of a fence did not previously include this vegetation. This situation then results in the Municipal Law Enforcement Officer trying to determine when the vegetation was planted, and only if it can be determined that the hedge or grouping of shrubs was planted after the passing of the current by-law on June 9, 2008, would the officer be able to enforce the height as prescribed in the by-law being 0.9 metres in height.

In these situations, the inability to lower the height of the obstruction creates an unsafe condition. Refer to Appendix I for an example of a hedge in the corner visibility triangle which may be “Deemed to Comply” within the current regulations of the by-law. In order to keep sight lines clear it is necessary to amend the “Deemed to Comply” regulation of the by-law so that it does not apply to corner and driveway visibility triangles. This would then limit the height, in those triangles, of all fences regardless of the date of the construction or planting.

CONCLUSION

Staff recommends that the “Deemed to Comply” provisions in the current Fence By-law PS-6 be amended to not apply to “Corner Visibility Triangles” and “Driveway Visibility Triangles” to eliminate obstructions that potentially interfere with sight lines and visibility of vehicle drivers accessing, or on the public right of way or road allowance for the purpose of public safety.

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PREPARED BY:	SUBMITTED BY:
HEATHER CHAPMAN MANAGER I, MUNICIPAL LAW ENFORCEMENT SERVICES	OREST KATOLYK MANAGER, LICENSING AND MUNICIPAL LAW ENFORCEMENT SERVICES
RECOMMENDED BY:	
G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL	

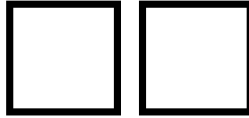
cc: Peter Kokkoros, P.Eng., Manager of Plans Examination & Deputy Chief Building Official
 Lou Pompilii, Manager, Zoning & Public Property Compliance
 Lynn Marshall, City Solicitor's Office

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APPENDIX 1





Bill No.
2013

By-law No. PS-6-

A By-law to amend By-law PS-6 entitled, "A by-law to provide for regulating and governing fences in the City of London."

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Section 3.1 of By-law PS-6 is amended by creating new subsection 3.1(a) by inserting the letter (a) in front of the paragraph beginning with the phrase "Notwithstanding the provisions of this by-law".
2. Section 3.1 of By-law PS-6 is amended by inserting the following new subsection 3.1 (b) after paragraph 3.1(a) as follows:
 - (b) Subsection 3.1(a) shall not apply to the requirements set out in subsections 4.1(c), 6.1(c) and 7.1(b), and for greater certainty, the deemed to comply provision shall not apply to a fence within a corner visibility triangle or driveway visibility triangle.
3. Section 2.2 of By-law PS-6 is amended by deleting the phrase "5.1 and 6.1" and replacing it with the phrase "6.1 and 7.1".
4. Section 12.3 of By-law PS-6 is amended by deleting the number 11.2 and replacing it with the number 12.2.
5. Section 14.7 of By-law PS-6 is amended by deleting the number 13.6 and replacing it with the number 14.6.
6. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on _____, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading -
Second Reading –
Third Reading –