

Review of Municipal Code Chapter 447, Fences

Date: April 26, 2018

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report recommends amendments to Municipal Code Chapter 447, Fences, following a review of the fence bylaw. The purposes of the amendments are to modernize the bylaw, ensure that it continues to meet community safety needs, provide greater flexibility in fence design to residents, ensure consistent enforcement and make the bylaw easier to understand. The proposed changes are intended to reduce the need for residents to apply for fence exemptions for circumstances that are currently routinely granted at Community Council. Staff estimate that the amendments will result in a 20 percent decrease in fence exemption requests sent to Community Council.

Key recommendations include:

- Remove height limits on hedges that act like a fence in side and rear yards.
- Increase the height limit from 1.2 metres to 2.0 metres on fences that are in the front yard between two private properties and not within 2.4 metres of the front lot line.
- Opt out of the Line Fences Act which prescribes a process for dealing with boundary fence disputes including requiring the appointment of Fence Viewers.
- Increase design options for pool enclosures, including allowing double gates and wooden horizontal fencing.

Staff also recommend updating fine and offence provisions to align with the authority provided under the City of Toronto Act, 2006.

As part of the review, staff analyzed all fence exemption requests received since 2016 and consulted with the public and key stakeholders.

These amendments will come into effect on June 20, 2018 and will not apply to fences that have previously been granted an exemption by Community Council.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards, recommends that:

General Fence Requirements

1. City Council amend Chapter 447, Fences, to allow fences that are located in a front yard between two private properties to be a maximum of 2.0 metres in height and specify that this does not apply to fences within a 2.4 metre distance from a front lot line.
2. City Council amend Chapter 447, Fences, to remove maximum height requirements for any hedge, shrub or other vegetation that acts as a fence except when the hedge, shrub or vegetation is within a 2.4 metre distance from a lot line abutting a public highway, other than a public lane.

Change Pool Enclosure Requirements

3. City Council amend Chapter 447, Fences, to permit double gates to be used in a pool enclosure if:
 - a. one gate is equipped with a self-closing and lockable self-latching device; and
 - b. the other gate has a lockable drop bolt that extends down into concrete, asphalt, or paving stones by a minimum of 25 millimetres; and
 - c. the lockable drop bolt is kept in the locked position except when the enclosed area is in use.
4. City Council amend Chapter 447, Fences, to allow wooden pool enclosure fences to be constructed using horizontal boards if:
 - a. the width and height of the boards is not less than 19 millimetres by 89 millimetres or greater;
 - b. the boards are spaced not more than 20 millimetres apart;
 - c. the boards are not offset or protrude any more than 15 millimetres from the board immediately above or below; and
 - d. the maximum board length is not greater than 2.4 metres.
5. City Council amend Chapter 447, Fences, to remove all requirements that pool enclosure posts must be embedded in concrete to a minimum depth of 900 millimetres below grade and instead specify that the posts must be securely fastened to the ground and structurally sound.

6. City Council amend Chapter 447, Fences, to clarify that the swimming pool enclosure cannot restrict visibility of the pool from any window or door located in the main living area of the building by replacing "access level" with "main living area".
7. City Council amend Chapter 447, Fences, to remove Section 447-3.F(3), which is a redundant section related to fence exemption applications, and direct that Section 447-5.C, which has a broader application, continues to apply.
8. City Council amend Chapter 447, Fences, to raise the minimum height requirement of metal picket pool enclosure fences on multiple residential properties and non-residential properties from 1.5 metres to 1.8 metres.
9. City Council amend Chapter 447, Fences, to allow swimming pools to be filled with water when temporary fencing is erected according to the bylaw and to specify that the pool area cannot be in use until permanent fencing has been installed, inspected and confirmed to be complete by the Executive Director, Municipal Licensing and Standards.

Opt out of Line Fences Act

10. City Council exercise its power under the City of Toronto Act, Section 109 to exempt the City of Toronto from the Line Fences Act and amend Chapter 447, Fences, and Chapter 441, Fees, accordingly (reference numbers 147, 148, 149, 150, 151).
11. City Council terminate all Fence Viewer appointments effective June 20, 2018 and amend or rescind the appointing bylaws accordingly.

Administrative Changes

12. City Council update Municipal Code Chapter 447, Fences, to be consistent with authority under the City of Toronto Act, 2006, to:
 - a. Increase the maximum fine amount from \$5,000 to \$100,000;
 - b. Establish special fines where it is determined that the conduct could have resulted in economic advantage or gain to the party found to have breached the bylaw;
 - c. Create an offence for failing to comply with a notice of violation or other order or direction made under the bylaw;
 - d. Establish that directors or officers of a corporation knowingly concurring in the contravention of any offence under the bylaw by the corporation are guilty of an offence;
 - e. Specify the authority of the City to enter on land to carry out an inspection to determine compliance with the bylaw, a notice of violation or other direction or order of the City or a direction or order made under a bylaw.

13. City Council amend Chapter 447, Fences, to remove reference to the list of site-specific exemptions in Schedule A.

14. City Council amend Chapter 447, Fences, to replace all references to the Chief Building Official with the Executive Director, Municipal Licensing and Standards.

Implementation

15. City Council authorize the City Solicitor and Executive Director, Municipal Licensing and Standards, to re-structure, consolidate and simplify all existing requirements to improve the readability of Toronto Municipal Code Chapter 447, Fences.

16. City Council direct that the changes to Toronto Municipal Code Chapter 447, Fences, become effective as of June 20, 2018.

17. City Council direct that fences and swimming pool enclosures that were lawfully erected before June 20, 2018 or that are granted exemptions be deemed to comply with Chapter 447 until they are replaced.

FINANCIAL IMPACT

There are no immediate financial impacts beyond what has already been approved in the current year's budget for Municipal Licensing and Standards. Future impacts on exemption request revenue will be addressed in the 2019 budget process.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On April 3, 2013, City Council adopted [LS19.2 Public Notification for Fence Exemptions](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS19.2) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS19.2>) to mandate public notices for fence exemption applications.

On August 25, 2010, City Council adopted [LS32.2 Amendments to Toronto Municipal Code Chapter 447 Including the Use of Tempered Glass in a Swimming Pool Enclosure](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.LS32.2) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.LS32.2>) to amend Toronto Municipal Code, Chapter 447, Fences, to include additional permitted materials for swimming pool enclosures and to clarify aspects of the bylaw to assist field staff in its interpretation.

On July 15, 2008, City Council adopted [LS15.2 Fence Sight Lines](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.LS15.2) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.LS15.2>) to amend Toronto Municipal Code, Chapter 447, Fences, to make open-fence construction around driveways mandatory and to clarify the bylaw.

On May 26, 2008, City Council adopted [LS13.3 Alternatives to Four-sided Swimming Pool Enclosures](#) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.LS13.3>), which maintained the four-sided fence requirements around swimming pools in Toronto Municipal Code, Chapter 447, Fences, and did not adopt any alternative safety devices.

On November 19, 2007, City Council adopted [LS8.8 Amendments to Municipal Code Chapter 447, Fences](#) (<https://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-11-19-cc14-dd.pdf>) which mandated the use of the four-sided pool enclosure design. The report addressed a member motion made on September 11, 2007, [LS7.5 Safer Pool Fencing](#) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2007.LS7.5>), requesting a staff report on Safe Kids Canada's recommendation of mandating four-sided pool enclosures.

COMMENTS

Fences on private property must comply with Municipal Code Chapter 447, Fences, which specifies permitted materials, maximum heights and visibility requirements at driveway entrances and parking lots. There are also specific requirements for pool enclosure fences.

Staff did an extensive analysis of the fence bylaw, with a focus on enforcement, the fence exemption process and pool enclosure requirements. Staff recommend amendments to the bylaw to modernize it, provide greater fence design flexibility, ensure that it continues to meet community safety needs, ensure consistent enforcement and provide clearer language to make it simpler for residents to understand. A summary of the recommended changes, along with a description and rationale, can be found later in this report.

Background: Current Fence Bylaw

Municipal Code Chapter 447, Fences, specifies the requirements for all fences on private property. The requirements also apply to any hedge or shrub that functions as a fence. With the exception of pool enclosures, permits are not required to build a fence. A pool enclosure permit is required for anyone building a pool. Residents can request an exemption to any fence bylaw requirement from Community Council.

In general, fences must comply with the following:

- The maximum height for most front yard fences is 1.2 metres.
- The maximum height for most other fences is between 2.0 metres and 2.5 metres.
- Fences within 2.4 m of a driveway must be open-fence construction for at least 2.4 metres from the lot line, which means they cannot obstruct view (e.g. chain-link fence).
- Fences cannot be made of barbed or chicken wire and sheet or corrugated metal.

The requirements for pool enclosures are different from the general fence provisions. Residents building a pool or other structure that has a depth greater than 0.6 metres of water must:

- Apply for a permit for the swimming pool enclosure; the application is reviewed for compliance with the fence bylaw, the city-wide zoning bylaw and other applicable law.
- Control access to the swimming pool with an enclosure; the pool must be entirely enclosed by a fence or wall. There cannot be window or door entrance to a pool from a building.
- Ensure that any entrance gate to a swimming pool area has a self-closing and self-latching device and be locked when the pool is not in use.

Background: Enforcement of Fence Bylaw

The fence bylaw is enforced based on complaints received from residents and councillors. Once a complaint is received, the fence is inspected to determine whether it violates the bylaw. Staff reviewed complaints made since January 2013 and found that the City receives between 850 and 1,000 per year related to fences. More than half (61%) of complaints were related to fence height and 16% were related to pool enclosures.

If a violation is found, staff can issue a notice that sets out the violation, directs the resident to change their fence to comply with the notice and provides a date by which the changes must take place. The resident can update the fence as directed or apply for a fence exemption, which costs \$200. The City issues between 260 and 320 notices of violation per year regarding the fence bylaw. Similar to fence complaints, more than half (63%) were related to fence height and 19% were related to pool enclosures.

If the resident applies for a fence exemption, the exemption is considered by Community Council. Staff notifies nearby residents of the application and the applicant must post a public notice of the application on their property ten days in advance of the meeting. Community Council can either grant the exemption, grant the exemption with conditions, or reject the exemption. If rejected, the resident must comply with the original notice of violation.

If the resident does not apply for a fence exemption and does not comply with the notice of violation within the stated time frame, the City can issue a charge. Staff reviewed charges issued since January 1, 2013 related to the fence bylaw. An average of 13 charges were laid per year. Charges related to pool enclosures made up just over one quarter of all charges (26%). Fines ranged from \$100 to \$5,000, with almost three quarters (73%) being \$500 or less.

Residents building a new fence can also apply for a fence exemption if they want to deviate from the bylaw.

Fence Exemption Requests

Staff reviewed fence exemption requests received between January 2016 and February 2018. Community Councils made a final decision on 200 separate fence exemption

requests. 62% of requests were granted, 21% were refused, 14% were granted with conditions and the remaining had portions of their request both granted and refused.

More than three quarters (77%) of fence exemption requests were related to a height increase. Rear and side yard exemption requests were more likely to be granted than those for the front and flankage yards. Of the 77 requests received for fences in the rear and/or side yard, 63 were granted (82%). Six of these were granted with conditions. In contrast, there were 82 front and/or flankage exemption requests. Of these, 55 were granted (67%); 15 of these were granted with conditions. Decisions that were both granted and refused were omitted from the analysis.

Staff estimate that one in ten of all exemptions were for fences that are hedges, shrubs or some other form of vegetation.

There were 40 requests related to pool enclosures (20% of all applications). The purpose of these requests varied considerably and included requests for exemptions to allow horizontal boards, non-permitted construction design, height increases, obstructed views and climbable elements, among others. A climbable element could include a part of a fence that provides a toe-hold or a tree that could be used to climb into pool area. For pool exemption requests, the majority of requests (82.5%) were granted.

Residents wait an average of 137 days, or 4.5 months, for a final decision to be made on their application. This is influenced by a number of factors, including the length of time needed to properly document the fence and write the report, the time required to provide public notice, the Community Council cycle and whether the application is deferred at Community Council.

Pool Enclosure Permits and Fees

As stated above, the only private fences that require permits are pool enclosures. A pool enclosure permit costs \$198.59. 427 permits were issued in 2017, which is up 42% from 2013. Since 2001, 3,580 pool fence enclosure permits have been issued.

Pool Enclosure Requirements

The current requirement for pools on private property to be entirely enclosed by a fence is intended to protect the public, especially children under five, from accidental drowning. Around 11% of drowning deaths in Ontario between 2010 and 2014 occurred in private pools, according to the [Lifesaving Society's Ontario Drowning Report from 2016](http://www.lifesavingsociety.com/media/261247/ontario_drowning_report_2017_selfprint.pdf) (http://www.lifesavingsociety.com/media/261247/ontario_drowning_report_2017_selfprint.pdf). Fifteen children under five drowned in backyard pools during this time period.

The Office of the Chief Coroner of Ontario [reviewed drowning deaths most recently in 2010](https://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/office_coroner/PublicationsandReports/Drowning/OCC_report_drowning.html) (https://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/office_coroner/PublicationsandReports/Drowning/OCC_report_drowning.html) and made a number of recommendations to prevent these deaths, including that pools be surrounded by four-sided fencing and that gates be self-closing and self-latching. In addition, the World Health Organization issued a [global report on drowning prevention](http://www.who.int/) (<http://www.who.int/>)

violence_injury_prevention/global_report_drowning/en/) in 2014 that also recommended four-sided pool enclosures.

Toronto's fence bylaw currently meets these recommendations. These requirements were added to Toronto's Municipal Code in 2007. In 2008, staff did a review of pool safety measures (LS13.3) to consider alternatives to four-sided pool enclosures. The review included child-proof (removable) fencing, magnetic gate and door locks, door alarms and pool covers, and evaluated them against criteria related to safety and ease of implementation. The review found that four-sided pool fencing is the single most effective safety measure with respect to preventing young children from unintentionally accessing swimming pool areas. Council did not approve any alternatives to four-sided swimming pool enclosures.

Jurisdictional Scan

Staff reviewed fence bylaws in seven Canadian urban municipalities, including three in Ontario. The municipalities examined were Calgary, Edmonton, Guelph, Hamilton, Ottawa, Vancouver and Winnipeg. Staff looked at fence height, pool enclosure requirements and how shrubs, hedges and other vegetation that act as a fence are treated.

Each municipality had a maximum fence height for front and rear yard fences. For front yards, fence height maximums ranged from 0.9 m to 1.6 m. For side and rear yards, maximums ranged from 1.8 m to 2.13 m. Some municipalities require that fences near driveways and sidewalks be lower to allow visibility for vehicles (down to 0.75 metres in one case). No other municipalities have the Toronto requirement that fences near driveways and parking lots be an open fence that allows visibility (like a chain-link fence).

Requirements for pool enclosures varied considerably. One municipality simply specified that the pool be enclosed by either a fence (including the rear yard fence) or wall. Other municipalities had more robust requirements that specified the standards by which gates, locking mechanisms and fences shall be constructed. None of the municipalities examined explicitly required a four-sided fence, as mandated in Toronto.

Of the seven municipalities examined, only Winnipeg specified that hedges or other vegetation are subject to the same regulations as fences. The other six do not treat hedges as fences and, as a result, do not limit the height of hedges. The exception for most of these municipalities is that when the hedge exists in an area that requires visibility, like a driveway or corner lot, hedge height is limited.

Consultation Findings

In March and April 2018, staff sought feedback through a public meeting and through written submissions on the fence bylaw. 12 people attended the consultation session. The majority of attendees were associated with the pool, spa and landscaping industries.

Most of the public meeting attendees wanted the four-sided pool enclosure requirements to be removed. In general, staff heard that the requirements for pool enclosures are too restrictive. In addition to removing the four-sided pool enclosure requirement, staff heard support for allowing horizontal boards, reducing the minimum height of pool enclosures, and allowing double gates.

For non-pool enclosure fences, staff heard differing opinions on current fence height requirement, with some arguing that it should be maintained to prevent the fortification of neighbourhoods and others believing that the bylaw should be flexible to allow residents to build taller fences for privacy and noise attenuation reasons. One resident told staff that there should be no maximum height for hedges.

Staff heard from both members of the public and those in industries impacted by the fence bylaw that the current bylaw is difficult to understand and interpret.

Staff also met with key stakeholders regarding the review. The Pool and Hot Tub Council of Canada, which represents companies associated with pool design, construction and maintenance, advocated for changes to the bylaw that allow pool enclosure options beyond a four-sided fence. This included three-sided fencing with self-locking and self-closing doors or with a Juliet-style gate installed in front of all doors leading into the pool area, as well as safety covers and lockable pool shelters. Parachute Canada and the Lifesaving Society told staff that current research suggests that four-sided fences remain the single safest way to prevent accidental drowning. They supported Toronto's current bylaw mandating a four-sided fence, but recommended that it be changed to apply retroactively to all pool enclosures.

Recommended Fence Bylaw Amendments

Based on a review of other jurisdictions and input from stakeholders and the public, staff have identified a number of recommended changes to the fence bylaw related to general fences, pool enclosures, the Line Fences Act and other administrative matters.

The amendments:

- Provide additional flexibility in fence design to residents;
- Ensure consistent enforcement of the bylaw;
- Modernize the bylaw to reflect current design trends;
- Reduce the number of fence exemptions applications received by approximately 20%; and
- Provide clarity to some technical interpretations of the requirements.

Amendments related to general fences

Amendments related to general fence heights and materials, and the rationale supporting each amendment, are listed in Table 1.

Table 1: Recommended amendments to Municipal Code Chapter 447, Fences, related to general fences

Change (recommendation reference)	Description	Rationale	Bylaw reference
<p>Increase height of side boundary fences in front yard (1)</p>	<p>Allow fences in the front yard between two single residential properties to be a maximum of 2.0 metres in height, except for within 2.4 metres of the front lot line.</p> <p>Front yard fences are currently required to be 1.2 metres.</p>	<p>Requests to increase height of side boundary fence in the front yard are routinely granted.</p> <p>This change allows residents with more options to increase privacy.</p> <p>Staff estimate that this change will result in a 7% reduction in fence exemption requests.</p>	<p>447-2 B. (1)</p>
<p>Remove maximum height of vegetation fences in side and rear yards (2)</p>	<p>Remove maximum height requirements for any hedge, shrub or other vegetation that acts as a fence except when the hedge, shrub or vegetation is within a 2.4 metre distance from a lot line abutting a public highway, other than a public lane.</p> <p>Currently, hedges and other vegetation that act as a fence must follow all fence maximum fence requirements.</p>	<p>Fence exemption requests related to increasing hedge height are routinely granted by Community Council. Staff believe that this is a reasonable approach that prevents the fortification of neighbourhoods. This change would eliminate approximately 5% of all current fence exemption requests. Hedges that act as fences in front yards and side yards abutting a public highway would continue to follow the maximum height requirements (of 1.2 metres) to maintain visibility along the public highway.</p>	<p>447-2 B. (1)</p>

Amendments related to pool enclosures

Amendments related to pool enclosures, and the rationale supporting each amendment, are listed in Table 2.

Table 2: Recommended amendments to Municipal Code Chapter 447, Fences, related to pool enclosures

Change (recommendation reference)	Description	Rationale	Bylaw reference
Allow double gates (3)	<p>Allow a double gate to be the entrance of a pool enclosure as long as one side of the double gate is bolted into concrete, asphalt or paving stones by a bolt that is a minimum of 25 millimetres long and the other side of the gate has a self-closing and self-latching device (as is currently required).</p> <p>Currently, only single gates are allowed as entrances to pool areas.</p>	<p>Provides residents with more flexibility in pool enclosure design while achieving pool safety goals.</p>	<p>447-3. C (4)</p>
Allow horizontal boards to be used as a pool enclosure (4)	<p>Allow wooden horizontal boards to be used in a pool enclosure, as long as they comply with the following:</p> <ul style="list-style-type: none"> -the width and height of the boards is not less than 19 millimetres by 89 millimetres or greater -the boards are spaced not more than 20 millimetres apart -the boards are not offset or protrude any more than 15 millimetres from the board immediately above or below -the maximum board length is not greater than 2.4 metres. 	<p>Exemptions for wooden horizontal boards are routinely granted by Community Council. This responds to changing design trends while maintaining the bylaw's intention regarding access protection.</p> <p>Requests to use wooden horizontal board make up 7% of fence exemptions requests.</p>	<p>§ 447-3E(2b)</p>

Change (recommendation reference)	Description	Rationale	Bylaw reference
Make requirements for posts in pool enclosures more flexible (5)	Remove all requirements that pool enclosure posts must be embedded in concrete to a minimum depth of 900 millimeters below grade and instead specify that the vertical elements must be securely fastened to the ground and structurally sound.	Embedding posts of a fence in concrete is not the only way to ensure the fence is safe and structurally sound. This change provides residents with more flexibility in fence design while preserving the safety goals of the bylaw.	447-3. E
Clarify the swimming pool visibility requirements (6)	<p>Clarify that the swimming pool enclosure cannot restrict visibility of the pool from any window or door located in the main living area of the building.</p> <p>The current requirement is that the pool is visible from the "access level of the building".</p>	Provides further clarity to the bylaw and to capture the various building designs to ensure that the pool area is visible. "Access level" is a confusing term.	447-3. E (3)

Change (recommendation reference)	Description	Rationale	Bylaw reference
<p>Remove reference to special fence exemption permissions for people with disabilities (7)</p>	<p>Remove the special authority for Community Council to only grant exemptions to certain pool enclosure requirements if they are not practicable because of a disability (Section 447-3 F (3)).</p>	<p>In May 2008, Council amended the bylaw to allow exemptions to certain pool enclosure requirements if they were not "practicable because of a disability...of an occupant of the building" (447-3 F (3)). In July 2008, Council amended the bylaw to allow anyone to apply for an exemption to the fence bylaw for any reason, but did not remove the more restrictive exemption process added in May 2008 (447-5 C). Currently, both processes remain in the bylaw. Because the exemption process added in July 2008 is broader than the one added in May 2008, the more restrictive process should be removed.</p> <p>Removing Section 447-3. F. (3) does not in any way impact an occupant who is seeking a fence exemption due to a disability.</p>	<p>447-3 F (3)</p>

Change (recommendation reference)	Description	Rationale	Bylaw reference
Simplify height requirements for metal picket pool enclosures (8)	Increase minimum height for pool enclosure fences made of metal picket fencing on multiple residential properties from 1.5 metres to 1.8 metres.	For multi-residential properties, all fences must be a minimum of 1.8 metres high except metal picket fences, which must be a minimum of 1.5 metres high. There is no reason why metal picket fences should be permitted to be shorter than other types of fencing.	447-3. D (1)
Allow swimming pool to be filled with water when temporary fencing has been constructed (9)	<p>This would allow residents to fill their pool prior to final inspection of permanent fencing, provided temporary fencing is in place that is built in accordance with the bylaw.</p> <p>Currently, a pool cannot be filled with water until permanent fencing is installed.</p>	Staff heard that in order to properly install pool liners, the pool needs to be filled with a moderate volume of water immediately. This recommended change responds to concerns from the industry that the current bylaw is too restrictive and does not align with current swimming pool installation standards.	447-3. B (7)

Opt out of Line Fences Act

Staff recommend the City exercise its power under the City of Toronto Act (COTA), Section 109 to opt out of the Line Fences Act.

If a resident has a dispute about a line fence, they can apply for a fence viewer to attend at the properties to decide on the dispute. The provincial Line Fences Act prescribes a process for dealing with line fence disputes. Chapter 447, Fences, sets out the term of the appointment and the remuneration for fence viewers. The line fence viewer process is managed by the City.

The Line Fences Act applies in Toronto, according to Article II of the fence bylaw. Members of the Property Standards Appeal Committee act as fence viewers when required. Staff are responsible for accepting applications under the Line Fences Act, determining whether the Act is applicable, arranging the fence viewing appointment and hearing, sending out formal notices to neighbours and paying the fence viewers. The cost of the fence viewing process must be born entirely by the applicant and is usually

over \$1,000 (see Attachment 1 for details). Since 2013, there has been one completed fence viewing.

Municipalities may opt out of the Line Fences Act. The Act is one of Ontario's oldest pieces of legislation and was originally put in place in 1834 for rural residents to deal with disputes about boundary fence maintenance. Typically, these residents would have significant amounts of land and many kilometres of fencing that protected livestock. The Act was not intended for urban municipalities where most fences are short and do not manage livestock. Section 109 of the City of Toronto Act, 2006, permits the City to opt out of the Line Fences Act, with the exception of section 20, for all or parts of Toronto. Section 20 of the Line Fences Act sets out the fencing responsibilities of owners of former rail lines in locations where a farming business is carried out on the adjoining land.

Other urban municipalities in Ontario, including Guelph, Hamilton and Ottawa, have opted out of the Line Fences Act entirely or within their urban areas.

Staff recommend opting out of the Line Fences Act. Neighbours can address boundary fences between themselves and, if they are unable to agree, through the civil court system. The process set out in the Line Fences Act for addressing boundary fence disputes is suited to rural areas where fences are long and construction and maintenance costs are significant. The process does not appear to be necessary in an urban area like Toronto that does not have agricultural lands, as evidenced by the fact that there has only been one completed fence viewing process since 2013.

Amendments related to administrative changes

Amendments related to administrative changes, and the rationale supporting each amendment, are listed in Table 3.

Table 3: Recommended amendments to Municipal Code Chapter 447, Fences, related to administrative changes

Change (recommendation reference)	Description	Rationale	Bylaw reference
<p>Update fines and offences to align with current authority (12)</p>	<p>Align the enforcement authority with those provided by the City of Toronto Act: -Increase the maximum fine amount from \$5,000 to \$100,000; -Establish special fines where it is determined that the bylaw violation could have resulted in economic advantage or gain; -Create an offence for failing to comply with a notice of violation or other order or direction made under the bylaw; -Establish that directors or officers of a corporation that knowingly violate the bylaw are guilty of an offence; and -Specify that the City has the authority to enter a premises at any reasonable time to inspect to determine compliance with the bylaw, notice, or direction made under a bylaw.</p>	<p>These changes will align the enforcement abilities under this bylaw with those available to City staff in other bylaws, including Chapter 354, Apartment Buildings.</p>	<p>447-4</p>
<p>Remove reference to list of site-specific exemptions in Schedule A. (13)</p>	<p>Remove appendix at the end of bylaw that lists site-specific exemptions.</p>	<p>Section is no longer accurate and has not been updated since 2010. Regularly updating this section would require a large amount of resources when decisions are already publicly available. Existing exemptions will continue to apply.</p>	<p>447-5(B)</p>

Change (recommendation reference)	Description	Rationale	Bylaw reference
Remove mention of the Chief Building Official (14)	Replace all mentions of the Chief Building Official with the Executive Director, MLS.	Staff are in the process of transferring responsibilities related to pool enclosures from Toronto Building to MLS. MLS needs the authority to issue the permits.	Throughout

Communication Improvements

As part of the review of the fence bylaw, staff identified a number of changes to staff processes and practices that will improve both the public's ability to understand and the City's ability to enforce the fence bylaw; these do not require changes to the current bylaw. Staff will take the following actions regarding fence requirements:

- Develop visual tools for staff to use to communicate to the public about the bylaw.
- Provide clear and visual information on the website about the fence bylaw.
- Improve the Community Council fence exemption report template so that information is consistent among Community Councils and to assist staff in preparing the report.

Implementation

Staff recommend that the changes to the fence bylaw outlined in this report come into effect on June 20, 2018. These changes would not apply to fences that received an exemption from Community Council.

CONTACT

Carleton Grant
 Director, Policy and Strategic Support
 Municipal Licensing and Standards
 Tel: 416-338-5576
 Email: Carleton.Grant@toronto.ca

SIGNATURE

Tracey Cook
 Executive Director
 Municipal Licensing and Standards

ATTACHMENTS

Attachment 1: Fence viewer fees, recommended to be removed from Municipal Code Chapter 441, Fees

Attachment 1: Fence viewer fees, recommended to be removed from Municipal Code Chapter 441, Fees

Table A1: Fence viewer fees, recommended to be removed from Municipal Code Chapter 441, Fees

Fee Description	Fee	Reference number
Application fee	\$25	149
Line Fence Handbook Fee	\$20	150
Fence viewer attendance and re-attendance	\$30 per hour x 3 viewers (minimum three hours, re-attendance includes travel time)	147, 151
Certificate of award	\$20	148