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# HALDIMAND COUNTY

## Report BME-01-2022 Fence Post Heights, Security Cameras and Surveillance Equipment



For Consideration by Council in Committee on May 10, 2022

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### OBJECTIVE:

To provide information on fence post heights, security cameras and surveillance equipment based on Council direction at the February 8, 2022 Council in Committee meeting.

### RECOMMENDATIONS:

1. THAT Report BME-01-2022 Fence Post Heights, Security Cameras and Surveillance Equipment be received.

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**Respectfully submitted:** Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

Staff is responding to Council direction to examine and respond to publicly raised concerns regarding regulation of the height of fence posts and security cameras/surveillance equipment. Given the magnitude of the issues, the complexity to address them (need for resources, training), and the potential for alternative (better) ways to deal with these issues, staff is recommending that the regulatory environment remain unchanged while staff continue to monitor and record complaints that may come to their attention in these regards. Should complaints and issues increase, staff would recommend looking at potential regulatory changes in response and at that time.

### BACKGROUND:

At the Council in Committee (CIC) meeting held on February 8, 2022, Council heard two delegations who raised concerns relating to the mechanisms available to regulate the height of posts and security cameras. Stemming from those delegations, Council passed the following resolution:

“THAT the correspondence and presentation material from Jessica Carpio and Donna Pitcher Re: Fence By-law and Security Cameras be received;

AND THAT staff be directed to report back on mechanisms available to regulate the height of posts along a property line, and an overview of municipal by-laws related to security camera regulation.”

The subject report responds to the above resolution.

## ANALYSIS:

### Fence Regulation

At the CIC meeting held on February 8, 2022, a resident addressing the committee expressed a concern about a neighbour installing a long line of posts along their shared lot line. The resident advised the Committee that the concern was that the neighbour was going to construct a fence well beyond the maximum height of 2 meters as prescribed by the County's Fence By-law and that the By-law needed to be amended to regulate how high posts along a property line can be. It was noted that these posts had been embedded into the ground for some time without the fence being built and was unsightly and affecting the ability to sell the property.

On November 23, 2020, Council passed By-law 2217/20 ('By-law'), being a by-law to regulate the construction of fences in Haldimand County. The By-law provides for a number of provisions that regulate fence height limits and setbacks in yards on a lot. The By-law defines a fence to include:

...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 or other thing or object used for the same purpose located in corner visibility triangle or Driveway Visibility Triangle and a Division Fence as provided for in this by-law.

The By-law does not regulate the height of posts along a property line in line with the concern raised by the delegate at CIC. However, when posts are incorporated into and are part of the structural support for a fence, thereby becoming part of the fence, posts are included in and are subject to the measurement procedure for determining the applicable maximum fence height. The procedure for determining the fence height is found in the definition of Height in the Fence By-law:

**"Height"** means the distance measured from the Effective Ground Level where the Fence posts are embedded to the top of the said Fence or posts; 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 or posts.

Staff have reviewed a number of municipal Fence By-laws (including City of Hamilton, County of Brant, City of Ottawa and City of London) for regulations regarding the height of posts. Each of these municipalities regulates fences and posts in the similar manner as is provided for in Haldimand County's Fence By-law. In the Fence By-law of the municipalities reviewed, there was a common exception to the maximum height for fences, which permitted decorative caps on structural posts to exceed the height restrictions to a maximum of fifteen centimetres (15 cm) or 6 inches.

While staff could not find a municipality that regulates standalone posts, Council does have the authority to pass a by-law and regulate standalone posts or posts that are not incorporated into and are not part of the structural support for a fence. Such regulation could be added into either the County's Property Standards By-law or Zoning By-law, and could look something like this:

- a post including a flag pole/post being of wood or metal or comprised of any other material over "X" in height shall not be erected, constructed, maintained or permitted less than "X" from a lot line.

The specific height and/or setback is something that could be further explored should Council direct staff to draft any such regulation for their consideration.

The concern around a row of standalone posts along a lot line was one which was brought forward by a delegate's presentation to Committee in Council on February 8, 2022, and is the 1<sup>st</sup> complaint of its kind. Staff have been monitoring the location where the posts are situated and can advise that

construction of a fence has begun utilizing the posts in question. Staff recommends that the situation be monitored. In considering the scope of the issue and the fact a fence is being constructed at this time, there seems to be no current public need for regulations for posts. That said, if regulating flag poles/posts, as noted above, is something that Council would like staff to introduce, it is recommended that it be done as part of an upcoming general amendment to the County's Zoning By-law. This recommendation is based on the Zoning By-law being the most appropriate place for such a regulation and given this particular provision could be added to the update items that staff are already working on and aiming to present to Council in June.

### Security Camera Regulation

Also presented at the Committee in Council on February 8, 2022, was a concern about security cameras from two delegates. The concerns raised were specifically the use, location and the scanning direction beyond the perimeter of the property. The delegates both encouraged the County to consider the implementation of a security camera regulation. Staff was tasked with investigating further the ability to do so, municipal experiences with such, and the implications of same.

Staff has undertaken some research and discussed this matter with the County solicitor and can advise that:

- There is a legislative basis to enact municipal regulation of security cameras under Section 133 of the *Municipal Act* – it falls under what are referred to as 'fortification provisions';
- Fortification provisions were put in place in the *Municipal Act* in 2006 to allow for regulation of fortification and excessive protective elements (including surveillance equipment), in particular as these related to gangs;
- Staff's understanding is that these Fortification provisions were never intended to cover individual security cameras/'minor' private property issues such as those of the two delegations before CIC; however, that has not stopped some municipalities from using this section of the *Municipal Act* to enact regulation to address concerns about privacy;
- While enacting a security camera regulation is rare for a municipality (given that the use of the 'fortification provisions' of the *Municipal Act* is taking a very generous interpretation), there are several municipalities that have entered the fray, one of which is Hamilton and another is Oshawa.

As noted above, there are several municipalities that we know have enacted a surveillance type by-law. In Hamilton's case, its' by-law has been in effect since 2010. The regulations restrict the placement of video surveillance equipment in circumstances where that video surveillance is used to monitor anything other than the homeowner's land (i.e. if they are used to view persons or land beyond the perimeter of the homeowner's land). Hamilton staff advise that they have had success in obtaining cooperative compliance to date with the limited amount of application of the by-law.

In Oshawa's case, it has a Fortification By-law that was enacted in 2005, that provides for regulations around:

- Excessive Protective Elements which includes advanced warning systems designed to forewarn of the encroachment onto the perimeter of land,
- Electrified Fencing or other similar barrier including hidden traps, electrified doors or windows etc., and
- Visual Surveillance Equipment, including video cameras, night vision systems, or electronic surveillance devices capable of permitting either stationary or scanned viewing or listening beyond the perimeter of the Land.

The City of Oshawa has had a successful prosecution with regards to the visual surveillance equipment part of its by-law. The by-law as a whole has seen limited use to date.

Notwithstanding the fact that municipal regulation of security cameras can be done and has been utilized in limited cases – e.g. Hamilton and Oshawa), the County Solicitor’s legal advice is that this would be extremely difficult to enforce and there are other (better) ways to deal with this, including through privacy legislation (Provincial) or civil means. Some of the distinct challenges we would face in terms of enforcement include:

- To obtain camera footage, staff would need to have a search warrant. There are a number time consuming hurdles and challenges that must be satisfied in order to obtain a Search Warrant from a Justice of the Peace;
- Staff would need to be trained in surveillance technologies in order to:
  - extract, copy and interpret the information;
  - understand the extent of the surveillance (e.g. being able to determine if it extends/has ability to extend beyond property boundaries);
  - understand the complexity of the equipment (e.g. how is it set up to view/record, whether it is in working condition, etc.); and
- The ability to secure the surveillance data once obtained.

In considering the public need for a by-law to regulate security cameras or surveillance equipment, the resources needed to enforce such a by-law, alternatives, (better) ways to deal with this issue (privacy legislation or civil means) and on the advice of the County Solicitor, staff is not recommending a by-law be adopted at this time. Rather, staff would recommend that the County’s Municipal Law Enforcement team continue to monitor this issue and record complaints that may come to their attention in this regard. Should the issue continue to grow or become more severe, staff would intend to bring the matter back to Council at that time with options for its consideration.

## **FINANCIAL/LEGAL IMPLICATIONS:**

Not applicable.

## **STAKEHOLDER IMPACTS:**

Not applicable.

## **REPORT IMPACTS:**

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

None.