



REPORT

Council

Meeting Date: June 19, 2023

FROM: Municipal Enforcement Services Department

DATE: June 6, 2023

SUBJECT: Updated Lot Maintenance By-law 2023-075, Property Standards By-law 2023-074, and Division Fence By-laws By-law 2023-076.

LOCATION: Town-wide

WARD: Town-wide

Page 1

RECOMMENDATION:

1. That By-law 2023-074, a by-law to prescribe standards for the maintenance and occupancy of property within the Town of Oakville, and to repeal By-law 2017-007, amending By-law 2018-042 and amending By-law 2022-032, attached as Appendix A to the report from Municipal Enforcement Services dated June 19, 2023 be passed.
2. That By-law 2023-075, a by-law to regulate exterior property maintenance including vegetation, waste and graffiti and to repeal By-law 2017-008, and amending By-law 2023-026, attached as Appendix B to the report from Municipal Enforcement Services dated June 19, 2023 be passed.
3. That By-law 2023-076, a by-law to apportion the cost of division fences and to repeal By-law 1991-084 and amending By-law 1994-081, attached as Appendix C to the report from Municipal Enforcement Services dated June 19, 2023 be passed.
4. That new certificate of compliance fees listed in Appendix G to the Report from the Municipal Enforcement Services department dated June 19, 2023 be approved, effective immediately, and such fees be included in the Rates and Fees schedule.

KEY FACTS:

The following are key points for consideration with respect to this report:

- The Property Standards By-law and the Lot Maintenance By-law set minimum standards for building and property maintenance in Oakville.

- The Property Standards By-law and the Lot Maintenance By-law came into force in 2017 and have had minor amendments since that time. The by-laws have not had a comprehensive review since 2017.
- The Division Fence By-law sets out how the cost for a division fence will be divided among adjoining property owners. This By-law has not had a comprehensive review since it was amended in 1994.
- An on-line survey was available for residents to comment on lot maintenance and property standards services provided by Municipal Enforcement Services.
- An open house was held on March 9, 2023, to gather feedback from residents regarding the property standards and lot maintenance by-laws.
- Staff are proposing a new Property Standards By-law (By-law 2023-074), a new Lot Maintenance By-law (By-law 2023-075) and a new Division Fence By-law (By-law 2023-076) for Council's consideration.

BACKGROUND:

Property Standards vs Lot Maintenance

Property standards and lot maintenance by-laws each include regulations that govern different aspects of property upkeep in the town of Oakville.

The Property Standards By-law includes a set of regulations that determine the minimum requirements for the condition and maintenance of buildings and structures on private property. These standards are intended to ensure that buildings are safe, habitable, and free from hazards such as mold and pest infestations. The Property Standards By-law also regulates the occupancy of properties, and regulates vacant properties, heritage properties, rental properties and non-residential properties, demolition, and deals with structural damage. At a more granular level, the Property Standards By-law also cover issues such as heating, plumbing, and electrical systems, as well as the overall cleanliness and appearance of the property.

Conversely, the Lot Maintenance By-law deals with minimum standards for the upkeep of the outdoor areas of private property. These regulations cover issues such as long grass, weed control, graffiti, derelict vehicles and the removal of waste from the property. The intent of the Lot Maintenance By-law is to maintain a safe and visually appealing community by ensuring that private property is kept in a clean and well-maintained state.

Many municipalities, including the Town of Oakville, have enacted and enforce both property standards and lot maintenance by-laws. Property standards by-laws are enacted under the Building Code Act and lot maintenance by-laws under the Municipal Act.

Since these by-laws have not been reviewed since their enactment in 2017, staff commenced a comprehensive examination of them, including public consultation to gather feedback from residents.

Division Fence

The Division Fence By-law provides more comprehensive and detailed guidelines for property owners than the Line Fences Act, and facilitates a smoother process for fence installation, repairs, and dispute resolution. It offers clarity on responsibilities, standards, and procedures. Most urban municipalities have determined the by-law is necessary to regulate the apportionment of costs for division fences and establish a process for the public to independently apply while the municipality remains impartial and does not become directly involved in property line fence disputes.

The Division Fence By-law establishes rules and regulations for determining how the costs of constructing, repairing, and maintaining a fence that is located on the property line between adjacent properties is to be shared between property owners. The By-law aims to promote fairness and clarity between property owners and to help resolve disputes that may arise.

The Division Fence By-law has not been reviewed since it was amended in 1994, and as a result, staff commenced a comprehensive review of it.

COMMENT/OPTIONS:

PUBLIC CONSULTATION

An on-line questionnaire was available for residents between February 23 – March 12, 2023, which contained several questions with the purpose of gathering feedback on areas of concern and providing an opportunity to comment on the lot maintenance and property standards by-laws. The questionnaire had 418 respondents and the information gathered has been considered during this by-law review.

The questionnaire identified the following respondents' answers:

- 58% have experienced an issue with undesirable material (garbage, broken/discarded material, long grass/weeds).
- 30% had concerns about vacant property deficiencies.
- 40% answered they did not feel the current by-laws are strong enough. 24% answered they feel the current by-laws are just right.
- 54% answered they were happy with the town's current service standard. 16% answered they were not.

- 33% answered they were not concerned with properties using surveillance cameras that may record footage beyond property lines. 10% answered they were very concerned.
- 29% would support the town regulating a naturalized area. 15% would not support regulations.
- 83% would support regulations requiring property owners/occupants maintaining the adjoining boulevard in front of their property free and clear of waste and keeping the grass/weeds at a height under 20cm.

On Thursday March 9, 2023, staff held a public open house at Town Hall. The open house was advertised through several methods:

- Councillors
- Website updates
- All valid Residents Associations
- All Business Improvement Area Associations

At this session, attendees were asked to provide comment on the proposed lot maintenance and property standards by-laws. The open house was attended by approximately 9 members of the public. The attendees were greeted by staff at each station who were available to answer questions and were invited to provide general comments about the by-law regulations. Staff considered the information gathered at this meeting during the development of the proposed lot maintenance and property standards by-laws.

Property Standards By-law

Based on feedback obtained through public consultation, and officers' experience, staff is proposing that Property Standards By-law 2017-007 (the current by-law) be repealed and replaced with By-law 2023-074 (the new by-law).

The major amendments proposed in the new by-law are set out below. Further details on the proposed amendments are available in the Table of Changes attached as Appendix D.

Re-organization

- Sections of the current by-law were restructured in the new by-law to improve readability and flow.

Waste

- The current by-law contains a definition for “undesirable material” that includes everything from garbage, vegetation, and inoperable motor vehicles to stagnant water, machinery, appliances and furniture. In order to simplify the new by-law, staff are proposing a new definition of “waste” to align with proposed By-law 2023-075 (the new lot maintenance by-law).
- The definition of “waste” contains a provision for excess accumulation of unused or unusable material. The addition of this language will make it easier for Officers to compel property owners to remove materials that are considered an excess accumulation or in an unsightly condition.

Repairs

- Language has been added to the new by-law to require property owners to ensure all repairs are made in a good and workerlike manner to perform its intended function, being reasonably compatible in design and colour with the adjoining materials, carried out with a degree of efficiency and knowledge, and where required by law, carried out by a duly qualified/licensed person.

Roof Structures

- New provisions have been added to ensure that a roof and all of its components are weathertight, free from leaks and unsecured or unsafe objects or materials. Roofs shall be kept clean and free from waste or other debris. Objects that are permitted on a roof are to be securely anchored and maintained in a safe condition and in good repair.

Lighting

- Under the new by-law, outdoor lighting is not permitted to directly illuminate the interior of a dwelling on an adjoining property regardless if such dwelling has shades, drapes or other interior window coverings. This will assist Officers during investigations to enforce the by-law when the interior of another dwelling is being directly illuminated instead of indirectly illuminated.

Construction Fences

- A new provision has been added to limit the period of time a property owner can use a construction fence when construction is occurring at the property that does not require a building permit. The period of time is not to exceed six months or as determined as reasonable by the Officer.

Swimming Pools

- A new provision has been added to ensure water discharged from a swimming pool is directed to the street curb and gutter to drain to the sewer or municipal culvert. This aligns with the Transportation and Engineering guidelines.

Trees

- A new provision has been added requiring property owners to remove a dead tree, or part of a tree that is dead, decayed or damaged that may be hazardous to persons or property.

Parking Garages

- New provisions have been added requiring parking garages to be:
 - illuminated by natural means where available;
 - contain an adequate number of light fixtures;
 - light fixtures to be maintained in good working order;
 - ventilation systems maintained in good working order at all times;
 - all means of egress, including doors to be maintained in good repair and free from obstructions; and
 - maintained free and clear of inoperable vehicles or vehicle parts.

Standards for Residential Rental Properties

- A new provision has been added requiring property owners to provide heat of at least 20 degrees Celsius-from September 1 to June 15. This provision does not apply to a rental unit in which the tenant can regulate the temperature and there is a functioning primary source of heat. This provision was changed from 21 degrees Celsius to 20 degrees Celsius and the dates added to align with the Residential Tenancies Act.

Vacant Buildings

- Specific language has been added to require all openings in vacant buildings through which entry may be obtained, to be secured from unauthorized entry and be secured using wood sheathing, metal sheathing or brick or concrete block. The options are to be considered progressively more secure.

Demolition

- A new provision has been added indicating that when it is not feasible to repair a vacant building to the standards prescribed in the by-law without first demolishing the building, the owner shall demolish the building or portion of it that is not feasible to repair within one (1) year of it becoming in that condition.

Inspections

- Specific language has been added to require that property owners provide reports, tests or samples, at their expense, that may be required by an Officer. For example, a property owner might be required to provide an arborist report so that the Officer can determine whether the owner's tree complies with the by-law.

Service of Notice or Order

- The option to serve a notice or Order required by this by-law by email to the last known email address of the person whom service is required to be made has been added to align with the service options in the Ontario Building Code.

Certificate of Compliance

- Section 15.5 of the Building Code Act states that an officer who, after inspecting a property, is of the opinion that the property complies with the municipality's property standards by-law may issue a certificate of compliance to the owner. The Act further states that an officer shall issue a certificate to an owner who requests one and who pays the fee set by the council of the municipality.
- The new by-law provides for the issuance of certificates of compliance, and Appendix G sets out proposed fees to be added to the Rates and Fees Schedule for regular and express certificates. These fees are based on the current fees for building compliance letters.

Lot Maintenance By-law

Based on feedback obtained through public consultation, and officers' experience, staff are proposing that Lot Maintenance By-law 2017-008 (the current by-law) be repealed and replaced with By-law 2023-075 (the new by-law).

The major amendments proposed in the new by-law are set out below. Further detail on the proposed amendments is available in the Table of Changes attached as Appendix E.

Re-organization

- Sections of the current by-law were restructured in the new by-law to improve readability and flow.

Application

- The new by-law applies to private property and to public property, where specified. This will enhance Officers' ability to deal with issues such as dumping, graffiti and feeding wildlife on public property.

Waste

- The current by-law contains a definition for "undesirable material" that includes everything from garbage, vegetation, and inoperable motor vehicles to stagnant water, machinery, appliances and furniture. In order to simplify the new by-law, staff are proposing a new definition of "waste" that separates grass, weeds and other vegetation, inoperable motor vehicles, stagnant water and pests from the "waste" category.
- The definition of "waste" contains a provision for excess accumulation of unused or unusable material. The addition of this language will make it easier for Officers to require the clean-up of a property where an excessive number of items are stored. The addition of this language will make it easier for Officers to compel property owners to remove materials that are considered an excess accumulation or in an unsightly condition.
- Under the new by-law, no person is permitted to place or dump waste on any property, including public property, unless permitted by other legislation. Further, the owner of property where waste has been placed or dumped must clear the waste from the property. The addition of this specific language will aid in the enforcement of the by-law.
- As in the current by-law, property owners must keep their property clear of waste. The requirements for the storage of waste in the new by-law have been enhanced, with waste required to be stored in proper recycling or garbage receptacles in accordance with Halton Region's Waste Collection By-law 123-12. Waste must be stored so that it cannot be blown out of its receptacle or otherwise escape from the receptacle.
- Language has been added to the new by-law to require that property owners remove receptacles, uncollected bulk waste items, uncollected yard waste and uncollected waste from the place they were set out for collection, in accordance with Halton Region's Waste Collection By-law. This will allow Officers to deal

with persons who leave receptacles and uncollected waste/bulk items/yard waste on their property from one week to the next.

Naturalized Areas

- Interest in planting naturalized areas on private property has increased as they often require less water, reduce or eliminate the need for chemical treatments and provide habitat for birds, pollinators, and other insects. However, a naturalized area still needs to be maintained to ensure that noxious weeds, invasive plants, etc. are not established. A naturalized area is not intended to be neglected or left to overgrow.
- In order to permit and regulate naturalized areas, the new by-law specifies that a naturalized area is deliberately planted or cultivated with one or more species of wild flowers, shrubs, annuals, perennials, ornamental grasses, or a combination of them, to emulate a natural area. Further, the naturalized area must be regularly monitored and maintained by the property owner.
- Naturalized areas will only be permitted in rear yards on a residential property, to a maximum size of 25% of the rear yard. In order to prevent the encroachment of the naturalized area onto neighbouring properties, a minimum 0.9 m buffer strip must be cut around the naturalized area where the area adjoins the lot line of another property. The vegetative growth and grass in the buffer strip must be cut when in excess of 20 cm in height.

Property Maintenance

- A new provision has been added requiring the cutting of a 10 m minimum perimeter strip around properties over .5 hectares in size, where there are no cut lawns or tended flower beds on the property. The grass and vegetative growth in the perimeter strip must be cut when in excess of 20 cm in height.
- Property owners are required to remove and destroy noxious weeds from the property. A list of noxious weeds is included in the Weed Control Act.
- At the Council meeting of November 16, 2020, Council directed that staff report back with options to address safety and environmental concerns arising from the use of fighting kites on private and public property. Municipal Enforcement Services staff has also received comments from residents voicing their concerns with the strings left behind after a kite fight.
- Kite fighting is an activity where two or more participants fly kites with the aim of cutting an opponent's kite string. The final kite remaining in the air is the winner of the fight. The string used for kite fighting is sharp and can be made of metal, wire, piano wire, fishing line or types of nylon string that has been chemically treated or that contains glass fragments. When these strings are left on the ground or left in trees, they can be a risk to health and safety, and cause injuries to people, pets and wildlife.

- New provisions have been added to require property owners to keep their property free of kite fighting string. Further, a prohibition has been added respecting the depositing of kite fighting string on any property, including public property.

Maintaining Adjoining Boulevards

- New provisions have been added to require that property owners cut grass, weeds and vegetative growth on adjoining boulevards when in excess of 20 cm in height and keep boulevards free from noxious weeds and waste.
- As previously mentioned, 83% of those responding to Enforcement Services' on-line survey would support regulations requiring the maintenance of adjoining boulevards.

Graffiti

- The definition of "graffiti" has been expanded to state that graffiti is the defacement of property, applied to any surface. Drawings and paintings have been included in the examples of graffiti.
- New language has been added to require property owners to immediately clean graffiti from items on their property such as fences, retaining walls, waste containers, etc.

Compost

- The requirements for composting, including where a compost container may be located, the number of compost containers permitted on a property, and setbacks for containers from property lines have been expanded in the new by-law.

Stagnant Water

- The current by-law includes stagnant water in the definition of "undesirable material". The new by-law provides a definition for "stagnant water" and a separate section to deal specifically with this issue.
- Swimming pools, hot tubs, wading pools, artificial ponds, or fountains must be kept in a state of good repair and in working condition. These items may not contain stagnant water.
- Stagnant water is not permitted to accumulate in any material that is capable of holding water, including but not limited to tires, cars, boats, garden fixtures and containers of any kind.
- The water in bird baths must be changed regularly to reduce potential mosquito breeding areas.

- Property owners must take all necessary steps to prevent or remove stagnant water located on their property, such as draining or filling excavations and depressions, installing screening or netting equipment so as to prevent the breeding of mosquitoes, or treating the property with a larvicide.

Inoperable Motor Vehicles

- The current by-law includes inoperable motor vehicles in the definition of “undesirable material”. The new by-law provides a definition for “inoperable motor vehicles” and updates section 6 of the current by-law.
- Inoperable motor vehicles are only permitted to be stored or parked within a fully enclosed attached or detached private garage. This is a Zoning By-law requirement and has been added to the new by-law for ease of enforcement.
- Current subsection 6(2) has been deleted since the storage of machinery, boats, trailers, etc. is currently enforced through the appropriate Zoning By-law.
- An exemption to these requirements for inoperable motor vehicles has been added for salvage yards and motor vehicle storage yards that are properly licensed under Licensing By-law 2015-075.

Inspections

- Specific language has been added to require that property owners provide reports, tests or samples, at their expense, that may be required by an Officer. For example, a property owner might be required to provide an arborist report so that the Officer can determine whether the owner’s tree complies with the by-law.

Effective Date of the New By-law

- If the new by-law is approved by Council on June 19, 2023, staff are proposing that it come into force on July 10, 2023, in order to provide time to communicate the new requirements to residents.

Division Fence By-law

The apportionment of fence costs is a common issue that arises between neighboring property owners. When a fence is located on a property line, it is considered a boundary fence, and both property owners are responsible for its construction and maintenance. However, disputes can arise regarding who should pay for what, and this can lead to tension between neighbours.

By establishing rules for the apportionment of fence costs, the By-law helps to avoid disputes and provide a clear framework for resolving disagreements. The framework creates a process for the public to independently apply while the municipality

remains impartial and does not become directly involved in property line fence disputes.

Based on the number of amendments required to the current by-law, staff are proposing that Division Fence By-law 1991-084 (the current by-law) be repealed and replaced with By-law 2023-076 (the new by-law).

The major amendments proposed in the new by-law are set out below. Further details on the proposed amendments are available in the Table of Changes attached as Appendix F.

Re-organization

- Sections of the current by-law were restructured in the new by-law to improve readability and flow.

Recitals

- A “Whereas” clause has been added to the new by-law to clarify that while the Division Fence By-law regulates the apportionment of costs for division fences, the Town does not become directly involved in division fence disputes among neighbours.

Basic Cost

- The definition of 'basic cost' in the new by-law includes the value of the material used for constructing, reconstructing or repairing a division fence plus applicable taxes but does not include the value of the labour performed to complete the work.

Application

- The by-law does not apply to any lands that are considered a public highway which includes lands abutting a public highway held as a reserve by the Town or other public authority.
- The current by-law contains a provision regarding the division of cost for a fence when the adjoining owner is the municipality. This provision has been removed from the new by-law since the new by-law exempts public property from its requirements.

Damage

- New provisions have been added that address situations when the division fence is damaged by an owner or a person permitted on the property, a natural

disaster, or a tree and specifies who is responsible for the cost of the repairs based on the occurrence.

Surveillance Cameras

In response to Council's directive, staff has assessed the possibility of prohibiting or limiting the use of surveillance cameras to record video footage beyond an individual's residential property.

Currently, there are no regulations governing the use of surveillance cameras on private residential property, and existing federal and provincial privacy laws and guidelines only apply to surveillance in public spaces and use of information by public institutions. Though certain organizations acting as housing providers may be subject to privacy laws, generally, the use of surveillance cameras on private residential property is allowed. However, voyeurism, i.e., recording video for sexual purposes in locations where privacy is expected, such as in a washroom or changing room, is strictly prohibited and considered a criminal offence under the Criminal Code.

The Municipal Act permits municipalities to regulate surveillance cameras under fortification by-laws, which prohibit excessive fortification of land, including buildings. Several Ontario jurisdictions have by-laws that prohibit "excessive protective elements," including surveillance cameras on private property. Many of these by-laws were introduced around the same time (2002-2005). At that time, the justification for these by-laws was to ensure access to property in the event of an emergency or criminal activity, rather than protecting privacy of neighbouring residents. For example, there were concerns that surveillance cameras were being used to monitor who was attending a property and to deny access, either at a gate and/or at a door. Staff has concerns regarding the enforceability and practicality of regulating surveillance cameras, particularly restricting or prohibiting them from recording beyond an individual's property, and it may be challenging to restrict video footage to one's property due to the proximity of dwellings in Oakville.

During the engagement process, residents were asked the following question in a public questionnaire "Some properties use surveillance cameras that may record footage beyond their property. Using the scale, please indicate your level of concern with surveillance cameras on private property". Staff discovered that the majority of respondents were not concerned with the use of surveillance cameras on neighbouring private properties.

Staff do not recommend introducing regulations to govern the use of surveillance cameras on residential property, as effective enforcement will be extremely difficult if not impossible and most respondents to this question on the public questionnaire were not concerned with this issue. To assist residents when there are neighbour disputes related to privacy, staff propose extending the existing mediation services

with Community Conflict Resolution Services of Halton to include referrals for surveillance camera issues.

Enforcement

Property standards and lot maintenance complaints, such as those listed below are investigated by Municipal Enforcement Services on a reactive basis.

The following tables set out the top five complaints received in 2022 for:

Property Standards:

Dead, decaying or damaged trees	87
Vacant Property	36
Structural/Building	34
Downpipe/Drainage	34
Pest/Vermin	33

Lot Maintenance:

Grass/Weeds over 20cm in Height	864
Refuse, garbage or debris	201
Conditions not maintained	120
Improper storage of refuse, compost, or recyclable material	91
Undesirable material: other	48

Officers work with property owners/occupants to obtain voluntary compliance with the by-laws. However, if voluntary compliance is not possible, progressive enforcement measures are available to Officers. These measures include the issuance of orders, administrative penalties, and/or retaining contractors to complete the work.

Administrative Penalties

Lot Maintenance By-law

An administrative penalty of \$300 may be issued to persons who fail to comply with the requirements of the By-law. Further action may be taken for subsequent violations including escalated penalties of \$400 for a second offence and \$500 for a third offence.

Property Standards By-law

Due to the complexity and severity of offences of this By-law, the fines have been increased from the current \$300 administrative penalty. Staff are proposing an administrative penalty of \$500 for a first offence. Further action may be taken for subsequent violations including escalated penalties of \$750 for a second offence and \$1,000 for a third offence.

Communicating New Regulations to Residents

Staff will develop and undertake a campaign to ensure that residents understand the new regulations regarding property standards, lot maintenance and division fences. Information will be provided via social media and on oakville.ca.

CONSIDERATIONS:

(A) PUBLIC

Subject to Council's approval, staff will communicate, promote and enforce Property Standards, Lot Maintenance and Division Fence regulations.

(B) FINANCIAL

There is no significant financial impact as a result of this report.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Multiple departments including Enforcement Services and Legal have been involved in the review and development of the new by-laws. Communications staff will assist in updating the website and to assist in public awareness.

(D) CORPORATE STRATEGIC GOALS

This report addresses the corporate strategic goal(s) to:

- Continuously improve our programs and services
- Provide outstanding service to our residents and businesses
- Be the most livable town in Canada

(E) CLIMATE CHANGE/ACTION

Ensuring that municipal by-laws respecting properties in our environment addresses the pillars of social sustainability.

APPENDICES:

Appendix A – By-law 2023-074 - a by-law to prescribe standards for the maintenance and occupancy of property within the Town of Oakville, and to repeal By-law 2017-007, amending By-law 2018-042 and amending By-law 2022-032

Appendix B – By-law 2023-075 - a by-law to regulate exterior property maintenance including vegetation, waste and graffiti and to repeal By-law 2017-008, and amending By-law 2023-026

Appendix C – By-law 2023-076 - a by-law to apportion the cost of division fences and to repeal By-law 1991-084 and amending By-law 1994-81

Appendix D – Table of Changes to the Property Standards By-law

Appendix E – Table of Changes to the Lot Maintenance By-law

Appendix F – Table of Changes to the Division Fence By-law

Appendix G – Certificate of Compliance Proposed Fees

Prepared by:

Andrew Eldridge

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Manager, Municipal Enforcement