

Fencing Setback Regulations

Date	September 23, 2020
To	Public Works and Infrastructure Committee
From	Citizen Services
Service Area	Roadways & Transportation
Item No.	PWI20-5

RECOMMENDATION

That the Public Works and Infrastructure Committee:

1. Remove item *MN20-7* from the List of Outstanding Items.
2. Receive and file this report.

ISSUE

This report provides recommendations, options and implications of amendments to fence setbacks in 'Schedule H2' of *The Traffic Bylaw, Bylaw, 1997, Bylaw No. 9900 (Bylaw)* in response to Motion *MN20-7* from the June 24, 2020 meeting of City Council.

IMPACTS

Financial Impact

None with respect to this report.

Policy/Strategic Impact

The recommended option is consistent with *The Transportation Master Plan*, specifically:

- 2.9 Develop a strategy to protect land for transportation needs, including Right of Way's (ROWs) and future transit corridors, as part of the land-use planning and approvals processes. Real Estate staff should be made aware of future corridor requirements to inform where the land should be retained by the city or purchased to accommodate future transportation needs.
- 2.28 Ensure infrastructure in new neighbourhoods and employment areas is designed to support universal accessibility.

- 4.22 Update the Development Standards Manual (DSM) to identify improvements to sidewalk and adjacent features in support of pedestrian comfort.
- 4.24 Update sidewalk design standards to increase accessibility. New guidelines should be developed with particular attention to sidewalk width, quality of materials and the provision of accessible pedestrian curb ramps.

There are no environmental, accessibility or other implications or considerations.

OTHER OPTIONS

Alternatives to Option 1 reviewed by Administration are:

- Option 2 - Develop a permit process for fence installation and make no changes to the *Bylaw*.
- Option 3 - Implement the new fence setbacks as per motion MN20-7.

COMMUNICATIONS

Pending Council's decision, Administration will develop a communication approach to ensure residents are aware of any amendments made to the *Bylaw*. Any bylaw amendments would be posted on Regina.ca. Administration would update materials relating to the *Bylaw* and communicate changes directly with impacted developers and residents as required.

DISCUSSION

At the June 24, 2020, meeting of City Council motion MN20-7 was passed:
Direct the Administration to prepare a report for the next Public Works and Infrastructure Committee that outlines any potential implications to amend 'Schedule H2' of The Traffic Bylaw, Bylaw No. 9900 as follows:

- a. set the minimum setback measurement for fences and other obstructions, "From Curb Only – No Sidewalk" from 2.0 metres to 0.6 metres; and*
- b. that if approved, the City Solicitor prepare the necessary amending bylaw, for this to take effect immediately*

The fence setback section of the *Bylaw* states that on a roadway with just a curb (no sidewalk) a fence structure needs to be at least 2.0 metres from the back of curb. Appendix A provides an illustration for the fence setback requirements from *Schedule H(2)* in the *Bylaw*.

Option 1 – Maintain fence setback regulation as currently outlined in the *Bylaw*. (Recommended)

Administration recommends no alteration to the current section of the *Bylaw* governing fence setbacks.

The existing bylaw provision provides consistent setbacks from the roadway regardless of the presence of a sidewalk and ensures city right of way is adequately protected and that sightlines for alleys, driveways and pedestrians are maintained. Violations of this section of the *Bylaw* can continue to be evaluated on a case by case basis to determine the priority enforcement locations based on the respective impacts to safety and accessibility.

It is important that the City of Regina (City) clearly asserts its property rights and maintains access to public right of way for the purpose of precedent, in addition to the ensuring access for construction, installation, maintenance and future capacity upgrades. The City does not permit individuals to occupy or erect structures on other public spaces such as parks or roads and should maintain this consistency. At present, if there was a requested encroachment that was not problematic for safety, accessibility or other concerns, the City can knowingly and formally consent to the encroachment through an encroachment agreement with the party seeking to encroach on City land. However, such an agreement may still result in the structure being removed at the cost of the property owner if infrastructure upgrades or enhancements were required. It is also important that a bylaw such as the *Traffic Bylaw* not encourage or suggest to residents that public land can be taken on an individual basis at no cost and without the consent of the City.

It should be noted that when the width of a standard sidewalk is added to the setback for sidewalk locations, the respective setbacks are both approximately 2.0 metres. By this measurement from the traveled road, the distance is consistent for locations with and without sidewalks.

Municipalities such as Saskatoon and Winnipeg clearly identify that fences in their communities are not to be constructed beyond the property lines or boundaries, and it is the responsibility of the property owner to ensure the fence does not encroach the right of way. In the case of Regina, property lines can typically be set back up to three metres.

Although Administration highlights right of way protection and sightline related safety considerations as a sufficient rationale for maintaining the 2.0 metre setback, additional purposes and benefits are described below:

- Vehicles parked adjacent to the curb can safely open passenger doors without impediment, and a reduction in the number of vehicles encroaching on a driving lane to provide enough room to access passenger doors. Appendix B illustrates this concern.
- Future installation of sidewalks to improve pedestrian connectivity and safety will not have a significant impact on the adjacent property owners. The 2.0 metre setback ensures enough room for sidewalk installation while maintaining the 0.6 metre buffer.
- Construction activities for road work, underground infrastructure and signage installation have sufficient space to do the construction work and stage equipment.
- A buffer space is maintained for pedestrian access and refuge where there are no sidewalks adjacent to the roadway.
- Sufficient space is reserved to respond to accessibility concerns, such as pedestrian ramps or accessible bus stops.
- Improves the aesthetics of neighbourhoods by ensuring residential streetscapes providing opportunities for landscaping and avoiding a 'hemmed in visual'. This

aligns with the aesthetic rationales for other structure setbacks, such as house placements in the zoning bylaw.

- Ensures equality across all neighbourhoods and does not reward those who have obtained larger private space by taking public lands without cost.
- Ensures the integrity of City bylaws by not retroactively changing to address a minority of residents. Current enforcement processes have encountered approximately 35 Service Requests in the last five years.

A reduction of the 2.0 metre buffer space to 0.6 metres would often result in the placement of a fence on City land or right of way and the City could still compel the removal of the fence. Rather the *Bylaw* codifies safety and accessibility and would provide an improved threshold where the City could then consider encroachments agreements for spaces where property lines exceed a 2 metre setback. Maintaining this buffer space in the bylaw reduces the risk of the removal of a fence constructed by a well-intentioned resident who was unaware the fence's configuration could cause a concern to future infrastructure, to safety or for accessibility.

The primary disadvantage of this option is this section of the *Bylaw* has not been proactively enforced. Generally, enforcement takes place on a complaint basis often after a fence has already been constructed. This results in a financial cost for a non-compliant homeowner to remove or relocate the fence when requested by the City.

Option 2 – Develop a permit process for fence installation and make no changes to the existing *Bylaw* (Not recommended)

Requiring homeowners to obtain a fence construction permit would help reinforce regulations in the *Bylaw* and all other City bylaws which govern fences. This option would require more research and development to assess potential staffing and funding implications. Municipalities such as Saskatoon, Edmonton, Calgary and Winnipeg do not typically require a building permit for construction of a fence, with the exception of instances where the fence exceeds height requirements.

Advantages include:

- ensures consistency across fence installations across the City
- ensures City staff are reviewing all governing regulations with regards to fences including setbacks, height, sightlines and property line adherence
- retains all the benefits from option 1 in keeping the Bylaw regulations the same.

Disadvantages include:

- would not address fences that are already built
- increased staff time to manage the permit process
- more effort would be required on behalf of the property owner for a new fence installation
- increased construction time and cost to resident.

Option 3 - Implement reduced setbacks as per Motion *MN20-7* (Not Recommended)

Reducing the setback as outlined in this report would negatively impact all the benefits as outlined in Option 1 of this report. Appendix B provides examples of locations within the City that currently have less than the minimum setback and the issues that they cause. In addition, it may create confusion as to where the property line is located especially in instances where the property line is at least 2.0 metres from the back of curb. This could lead to enforcement issues if residents only refer to the Bylaw before construction.

Advantages include:

- If a homeowner owns the land 0.6 metres behind a curb only roadway, they would be able to build a fence up to 0.6 metres setback from the curb.

Disadvantages include:

- Where sidewalks are not present next to a roadway, a vehicle may not be able to open passenger doors fully causing passengers not to be able to get out of vehicle and restrict parking locations on certain streets. This may lead to drivers parking further from the curb than legally allowed, or cause accessibility issues in some locations.
- Pedestrians would be adversely affected by having to use the streets in locations where there are no sidewalks as the grass boulevard would not exist with the new fence setbacks. This is not ideal for pedestrians where there is not dedicated infrastructure. The safety of pedestrians is concerning when forced to walk on the street in mixed traffic and around parked cars instead of being able to use the right of way that is currently retained.
- If the City determines that a sidewalk is needed adjacent to one of these roadways the cost would be increased if a fence needs to be relocated as a part of the project.
- New regulations would need to be researched and implemented to ensure adequate sightlines near driveways and alleyways.

DECISION HISTORY

At the June 24, 2020 meeting of City Council, Administration was directed to prepare a report outlining the implications of changing 'Schedule H2' of *The Traffic Bylaw, Bylaw No. 9900* related to minimum setbacks for fences and other obstructions.

Respectfully Submitted,



Chris Warren, Director, Roadways & Transportation

8/21/2020

Respectfully Submitted,



Kim Conran, Executive Director, Citizen Services

9/14/2020

Prepared by: Danielle Fortin, Project Engineer

ATTACHMENTS

Appendix A - Fence Setback (Existing & Proposed)

Appendix B - Examples Fence Setback