



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

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Date	Ver.	Action By	Action	Result
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REQUEST FOR DIRECTION

DATE: October 12, 2021 Report No. DEV-21-070

TO: Laurie Hurst, Chief Administrative Officer

FROM: Karen Hay, Planner and Bill Brown, Director of Development Services

SUBJECT:

New fencing regulations and deer

ESSENTIAL QUESTION:

What changes to the Zoning Bylaw would the Committee like to see to enable residents to further protect garden vegetation from Columbia Black-Tailed Deer feeding?

RECOMMENDATION:

That the Committee of the Whole receive Staff Report No. DEV-21-070 for information, provide any additional direction to staff as the Committee considers advisable, and direct staff to prepare a report and Zoning Bylaw amendment bylaw for Council's consideration.

BACKGROUND:

Appendices

Appendix A: Council Motion

Appendix B: Pictures of fencing, netting, and other defensive approaches

Appendix C: Zoning Bylaw, 1992, No. 2050, Section 22. Fences and Retaining Walls

Appendix D: Public Comments

Purpose

On June 28, 2021, Council passed a motion directing staff to draft a report regarding regulation of fence heights and design that “should briefly explore ways to increase fence heights along with guidelines to allow for esthetics of the neighbourhood” (Appendix A).

The deer feeding in Esquimalt gardens are Columbia Black Tailed Deer (*Odocoileus hemionus columbianus*). They are native to Vancouver Island and are very adaptable to human dominated environments. They are considered a mid-sized deer with the ability to jump up to 2 metres, occasionally a little higher.

Deer are creatures of habit and will return to the same areas regularly, so acting early to discourage their browsing of valued vegetation will reduce damage. There are various ways to lessen the impact of feeding, including protective structures (including fencing), habitat modification (providing more native vegetation for feeding), repellents, and planting deer resistant plants. In mid to late summer, bucks (male deer) will also rub their antlers on tree trunks, which is not a problem for larger trees but can cause severe damage to young trees. As shown in Appendix B, Esquimalt residents have employed various creative ways to use protective material to protect their favoured plants and garden areas.

Fencing is considered the most effective measure for property owners to protect gardens, where the fence encloses an entire area, leaves no holes, or gaps, and extends flush to the ground. Deer have been recorded passing through openings as small as 19 centimetres and will travel along a fence-line to seek an opening. Erecting a fence around a new garden area has been shown to be more effective than trying to deter established behavior.

Esquimalt Zoning

The Zoning Bylaw, 1992, No. 2050 defines a fence as:

A vertical barrier which accomplishes any one or more of the following:

- (1) prevents access;
 - (2) provides physical separation;
 - (3) provides visual separation;
 - (4) provides enclosure of a Parcel or portion of a Parcel;
- but does not include a Retaining Wall or Guard.

Fencing is governed by Section 22. Fences and Retaining Walls of the General Regulations (Appendix C) with height restrictions found in the various residential zones where the following regulation is commonly found:

“Subject to Section 22, no fence shall exceed a Height of 1.2 metres in front of the front face of the Principal Building and 2 metres behind the front face of the Principal Building”.

On corner lots, fencing in an exterior side yard is treated similarly to a front yard fence (per Section 22.(3)).

Fencing is further restricted within 6 metres of highway corners in order to maintain visibility at intersections (per Section 24. Visibility at Intersections).

Regulations From Area Municipalities

Typical allowable heights for backyard fences in most municipalities in BC is 2 metres. The District of Saanich and Town of View Royal have regulations very similar to Esquimalt. The District of Oak Bay and City of Victoria allow higher fences with certain restrictions.

In Oak Bay a fence located in a backyard is restricted to 2 metres in height (same as Esquimalt) with an additional 0.46 metres of trellis allowed. Oak Bay places the following restriction on the trellis:

“For each section of the fence as defined by the distance between posts along the fence line, the trellis-work must be of substantially uniform density, with the openings between the laths evenly distributed in all directions and representing not less than 25% of the total area of the vertical plane, including the top rail and cap, of the portion of the fence above the maximum height set be 6.2 or 6.3, whichever is applicable.” (Oak Bay - Bylaw No. 3536)

The City of Victoria allows backyard fences up to 1.83 metres in height for residential zoned properties or up to 2.13 metres if the fence is constructed of wire, strands, vertical iron, 15.24 cm spaced pickets or lattice, and has at least 75% open space in the fence design.

In Oak Bay front yard and corner lot fences may not exceed 1 metre in height.

In Victoria front yard fences are limited to 1.22 metres in height.

ISSUES:

Fence construction that complies with zoning regulations does not require a permit. Though fence details are included within the landscape plans of development permit applications, a development permit is not required to erect a fence. Therefore, design guidelines would provide little enforcement capacity and it would be more worthwhile to consider additional zoning regulations and exceptions within Section 22 of the Zoning Bylaw.

A solid fence can be attractive and may increase privacy between neighbours. However, taller solid fences may also prevent sun light from entering garden areas and hence reduce plant productivity due to reduced access to light of an appropriate wave length and reduced heat units, block valued views in hilly areas, and can hinder protective neighbourhood surveillance. Also, continuous fencing that extends above eye level can deter pedestrians from walking in an area and can impact the character of an established neighbourhood. Finally, excessive fencing creates a fortress appearance that can damage the public's perception of an area. For these reasons, care must be taken in seeking a design solution if fences are used as a tool to control deer browsing pressure on garden areas.

As can be seen in Appendix “B”, there are a myriad of fence designs in Esquimalt that have been built by residents to protect the vegetation in front yards from browsing by deer. Most are not compliant with the existing fence regulations in the Zoning Bylaw. Blanket enforcement of the existing regulations would create a problem for Bylaw Enforcement as there are so many fences with so many designs. A better approach would be to acknowledge the need for fences that help protect gardens from deer browsing but are attractive and do not create the issues outlined in the previous paragraph. Such an approach would reduce potential bylaw complaints and support the existing urban agricultural objectives and policies in the Official Community Plan.

The Official Community Plan contains the following objectives related to urban agriculture in this context:

Support the establishment of allotment gardens, community gardens, edible landscapes, food bearing trees and other types of food production activities.

To promote local food production as a means to mitigate climate change and support food resiliency in an emergency.

Not allowing residents to protect their agricultural pursuits from being damaged or destroyed by deer would be contrary to the urban agricultural objectives and policies of the Official Community Plan. Furthermore, the Official Community Plan contains several policies and guidelines related to the naturalization of landscapes, reduction of green house gas emissions, and climate adaptation that are supported through the growth of urban agriculture in front and side yards of residential properties.

Finally, the Township has embarked on a multi-year study of resident deer populations to collect data on the potential impact of immunocontraception as a tool for controlling deer populations in Esquimalt. Depending on the results of the study and its cost effectiveness, it may become a tool in helping to control the deer population in Esquimalt and reduce the browsing pressure on residential gardens.

For Consideration

- The existing fence heights have served the community well for many years and are not out of character with neighbouring municipalities.
- In Esquimalt numerous homes technically face an exterior side yard.
- In a front yard and exterior side yard, taller fences could be restricted to enclosing only a percentage of that yard. Many gardeners only fence the garden bed that is used to grow produce. This would allow deer some opportunity to feed in neighbourhoods.
- That portion of a fence that exceeds existing height limits could be required to be very visually open (see Victoria's requirements above), possibly requiring use of a different material than the lower portion of the fence. Several examples of this can be seen in Appendix B.
- Fences are currently not required to be setback from lot lines. Over height fence sections could be required to be setback 1-2 metres from front and exterior side lot lines.
- Fencing with a top rail provides stability for the fence but allows deer to judge the height more easily.
- Netting has been known to get caught in deer antlers and traps other creatures, primarily birds.
- Chain-link fencing would meet a 75% open space design requirement but has an industrial appearance.
- Post height does not need to be included in the fence height calculation.
- A maximum height should be considered even for wire and pole extension, 2.5 metres would exceed the height Black Tailed Deer can jump.
- When a homeowner desires a more substantial, higher fence, a development variance permit application is a reasonable option.
- Homeowners could also be encouraged to plant a variety of native plants outside of fenced areas that could tolerate some deer feeding once established.

ALTERNATIVES:

1. That the COTW receive Staff Report No. DEV-21-070 for information, provide any additional direction to staff as the COTW considers advisable, and direct staff to prepare a report and Zoning Bylaw amendment bylaw for Council's consideration.
2. That the COTW provide alternative direction to staff.
3. That the COTW request further information from staff.