

The Corporation of the City of Kawartha Lakes

By-Law 2017-____

A By-law to Regulate Fences in the City of Kawartha Lakes

Recitals

1. Section 10 (2) 10 of the Municipal Act, 2001, authorizes the councils of municipalities to pass By-Laws with respect to structures, including fences.
2. Section 3 of the Line Fences Act, 1990, provides that an owner of land may construct and maintain a fence to mark the boundary between the owner's land and adjoining lands.
3. Sections 7(1)(i)(j) of the Building Code Act, 1992, provides jurisdiction to the City of Kawartha Lakes to require the person to whom a permit is issued to erect and maintain fences and to prescribe the height and description of the fences.
4. Council considers it advisable to regulate the fencing of properties within the City of Kawartha Lakes.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2017-____.

Section 1.00: Definitions and Interpretation

1.01 **Definitions:** In this by-law,

"Agricultural property" means a property that is zoned for agricultural uses in the Zoning By-law that applies to the property;

"Berm" means a man-made earthen embankment erected to act as a landscaping screen or noise barrier;

"Building Code Act" means the Building Code Act, 1992, S.O. 1992, C.23, as amended;

"Building Division" means the Building Division of the Development Services Department of the City or, in the event of organizational changes, another office designated by Council to carry out the Division's responsibilities;

"Chief Building Official" (CBO) means the person appointed by the Council as the Chief Building Official, and such inspectors as are required, for the purpose of enforcement of the Building Code Act;

"City", "City of Kawartha Lakes" or "Kawartha Lakes" means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

"City Clerk" means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

"Construct a fence" means to, construct, erect, build, install, alter, reconstruct or replace a fence or to cause or permit another person to do so and "construct a pool fence" has a corresponding meaning;

"Corner Lot" means a lot situated at the intersection of and abutting upon two streets, or upon two parts of the same street, the adjacent sides of which street or streets, (or, in the case of a curved corner, the tangents at the street extremities of the side lot lines) contain an angle of not more than 135 degrees. In the case of a curved corner, the corner of the building lot shall be that point on the lot line abutting a street nearest to the point of intersection of the said tangents;

"Council" or "City Council" means the municipal council for the City;

“Daylighting Triangle” shall refer to a triangular piece of land located at the intersection of two street streets, the size of which shall be governed by the regulations contained in the Zoning By-law that applies to the property (see diagram below);

“Driveway Daylighting Triangle” shall refer to a triangular piece of land located at the intersection of a driveway with a street, the size of which shall be governed by the regulations contained in the Zoning By-law that applies to the property. Where the applicable Zoning By-law has no regulations, the appropriate Driveway Daylighting Triangle shall be measured 3 m from the point of intersection between the driveway and the front lot line along both the driveway and the front lot line and line shall then drawn between both endpoints forming a triangle (see diagram below);



“Effective Ground Level” means the level of the ground within 1.0 m horizontally in any direction from the point being considered;

“Fence” means a structure or partition including a railing, wall, line of posts, wire, boards or pickets made of wood, metal, plant materials incorporated into a fence, or other substance that is constructed for any purpose, such as marking the boundary of a property, enclosing a property, providing privacy, preventing access by people or animals or dividing a property into sections and includes every door, gate and other closure that forms part of a fence;

“Height” means the vertical distance measured from the finished grade abutting the fence posts to the highest point of the fence. Where a fence is located on top of a retaining wall or berm, "height" also includes the vertical distance of the retaining wall or the berm with the fence, where the vertical distance is measured from the finished grade abutting the retaining wall or the berm. Where a fence contains interwoven plant materials, the plant materials are excluded from the prescribed fence height;

“Industrial Property” means a property that is zoned for industrial uses in the Zoning By-law that applies to the property;

“Line Fences Act” means the Line Fences Act, R.S.O. 1990, c L.17, as amended;

“Lot Line” means any legal boundary of a lot;

“Manager of Municipal Law Enforcement” means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council;

“Municipal Law Enforcement Officer” means a person appointed by Council under section 15 of the *Police Services Act* to enforce the by-laws of the City;

“Non-Residential Property” means a property that is zoned for uses other than residential uses in the Zoning By-law that applies to the property;

“Notice” means the written notice referenced in Section 2.01 and described in Section 2.00 of this By-Law;

“Owner” means the individual, firm, partnership or corporation that is the registered owner of a property and includes a lessee, tenant, mortgagee in possession and the person or persons in charge of the land;

“Person” has the same meaning as in the Interpretation Act and includes a corporation;

“Planning Act” means the Planning Act, R.S.O. 1990, c. P.13, as amended;

“Privacy Screen” means a visual barrier used to shield any part of a yard from view from any adjacent parcel or street;

“Property” means a parcel of land on which the fence is constructed;

“Residential Property” means a property that is zoned for residential use in the Zoning By-law that applies to the property;

“Retaining Wall” means a structure designed and constructed to restrain soil when there is a change in ground elevation;

“Street” means a “street” within the meaning of *The Highway Traffic Act, R.S.O. c.H.8, as amended*, and the *Municipal Act, R.S.O. 1990, c.M. 45, as amended*, and shall also include streets in registered Plans of Subdivision that are to be assumed under the terms of a subdivision agreement and private streets that are not assumed by the City;

“Temporary” means to be used for a limited amount of time and not on a permanent basis;

“Yard” means an open, uncovered space on a lot appurtenant to a building and unoccupied by buildings or structures except as specifically permitted elsewhere in the applicable Zoning By-Law. In determining ‘yard’ measurements, the minimum horizontal distance from the respective lot lines shall be used;

“Yard, Exterior Side” means the yard between a street or a reserve abutting a street and any part of the primary building or structure, extending from the front yard to the rear yard of a lot;

“Yard, Front” means the yard extending across the full width of a property between the street line and the closest part of the front wall to the primary building but does not include the front wall of an attached garage. For the purposes of this definition, ‘front wall’ shall include the front wall of a deck, porch, carport, verandah, or other similar structure covered by a roof. Where a property has frontage on more than one street, the front yard shall be deemed to be that yard with the narrowest frontage along the street;

“Yard, Interior Side” means the yard between the side lot line and any part of the primary building or structure extending from the front yard to the rear yard of a lot but does not include an exterior side yard;

“Yard, Rear” means the yard extending across the full width of the lot between the rear lot line and the closest part of the rear wall of the primary building or structure on the lot;

“Zoning By-law” means a By-law approved under Section 34 of the Planning Act that restricts the use of land.

1.02 **Interpretation Rules:**

- (a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

- (b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.
- 1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.
- 1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

Section 2.00: Application

- 2.01 **Requirements:** The requirements of this by-law apply to all properties within the City of Kawartha Lakes, except where otherwise provided. This by-law does not apply to fences as regulated by the following City of Kawartha Lakes by-laws:
 - (a) Swimming Pool By-law 2005-314, as amended;
 - (b) Salvage Yard By-law 2013-196, as amended;
 - (c) Fortification By-law, 2013-043, as amended; and
 - (d) Parks Use By-law, 2006-147, as amended.
- 2.02 **Compliance:** This by-law applies to the City of Kawartha Lakes, except for land owned by or used by the City or a board of education.
- 2.03 **Conflict:** If there is a conflict between a fencing requirement established by another by-law of the City and a fencing requirement of this by-law, the requirement that establishes the higher standard in terms of protecting the health, safety and well-being of the inhabitants of the City prevails to the extent of the conflict. In the event a conflict arises with any Zoning By-law which was in effect in the City of Kawartha Lakes on the date of passage of this by-law, dealing with the installation of fences, the requirements of this by-law shall prevail.

Section 3.00: Regulations

- 3.01 **Compliance:** No person shall construct a fence that does not comply with the requirements of this by-law, except as provided in section 4.00 – Exemptions. Where this by-law refers to permitted uses under a Zoning By-law, no person shall erect a fence around a use or uses that is not permitted under the applicable Zoning By-law.
- 3.02 **Requirement to Comply:** Every person who constructs a fence that does not comply with the requirements of this by-law shall take such action as is necessary to make the fence comply with the requirements by the date specified in the notice given by the City.
- 3.03 **Permit:** Except in the case of a swimming pool fence, as required by the Swimming Pool By-law, no permit is required for the construction of a fence.
- 3.04 **City Property:** No person shall construct a fence on City property, including any street.
- 3.05 **Prohibited Materials:** The following fencing materials are prohibited when used on or adjacent to residential property, street or public property, unless otherwise stated in Section 4.00 Exemptions:
 - (a) Barbed wire or other barbed material;
 - (b) Razor wire;
 - (c) Electrified wire; and

- (d) Chain link that is not vinyl or powder coated.
- 3.06 **Construction:** No person shall construct a fence unless the fence is:
- (a) Stable;
 - (b) Vertical;
 - (c) Made of good quality materials;
 - (d) Suitable for the intended purpose;
 - (e) Constructed and supported in a manner commensurate with the design of the entire fence;
 - (f) Structurally capable of safely sustaining its own weight and any load to which it might normally and reasonably be subjected; and
 - (g) Constructed in a manner accepted as good workmanship in the trades concerned.
- 3.07 **Residential Fence Height:** No person shall construct a fence that is greater than 2 metres in height on or around a property zoned for residential uses.
- 3.08 **Non-Residential Fence Height:** No person shall construct a fence that is greater than 3 metres in height on or around a property zoned for non-residential uses.
- 3.09 **Daylighting Triangles and Driveway Daylighting Triangles:** Despite sections 3.07 and 3.08, no person shall construct a fence on their property within a daylighting triangle or driveway daylighting triangle, that is greater than 1.0 metre in height above adjacent finished grade.
- 3.010 **Abutting Lot:** Where the front, rear or side yard of any lot abuts the front, rear or side yard of any other lot, the more restrictive provisions shall apply shall apply to the erection of a new fence.
- 3.011 **Non-Residential Lots:** A person may construct a fence to enclose a front yard of a lot used primarily for non-residential purposes provided that such fence shall:
- (a) be set back from the front lot line a minimum of 7.5 metres; and,
 - (b) not be located within any daylighting triangle or driveway daylighting triangle.
- 3.012 **Drainage:** No person shall construct a fence over a drainage easement or watercourse as to obstruct the flow of water, without constructing a water gate sufficient to ensure adequate drainage.
- (a) All water gates on fences shall at all times be kept free from obstruction by the Owner of such fence.
 - (b) Exemption: a water gate may not be required for fences in which sufficient ground clearance has been established.
- 3.013 **Width:** No person shall construct a fence that is greater than 0.2 metres wide.
- 3.014 **Privacy Screens:** A privacy screen may be erected in any yard, if:
- (a) it is in compliance with applicable Zoning By-law minimum yard setbacks for structures; and
 - (b) The privacy screen is not more than 12 metres in total length and no single individual length is longer than 3 metres, with 0.6 metre minimum break between sections; and
 - (c) The privacy screen is not more than 3 metres in height.

3.015 **Maintenance:** Every person who constructs a fence or causes a fence to be constructed shall keep such fence:

- (a) In good repair;
- (b) In a safe and structurally sound condition;
- (c) Free from accident hazards;
- (d) Maintained so that the finish does not visibly deteriorate where the surface has been previously painted, stained, varnished or which has been treated with other similar protective finishes; and
- (e) Free from unsightly markings, stains or other defacements on the exterior surfaces of fences and if necessary shall refinish the fence.

3.016 **Repairs:** All repairs and maintenance prescribed by this By-law shall be carried out by the Owner or occupant, as applicable, in a manner acceptable in the trades concerned and with materials suitable and sufficient for the purpose.

Section 4.00: Exemptions

4.01 The requirements of this by-law do not apply to a fence that was constructed lawfully prior to the day on which this by-law came into force.

4.02 Despite section 4.01, the requirements of this by-law become applicable when any change to a fence is made after the day on which this by-law came into force.

4.03 The requirements of this by-law with respect to the height of fences do not apply to a fence on an agricultural property that is necessary for the raising of livestock or for other agricultural purpose.

4.04 Notwithstanding any other provision herein, a fence which is constructed as required in a registered agreement or agreements or other planning approval entered into with the City of Kawartha Lakes pursuant to the Planning Act, as amended, or any plans approved by the City in accordance with those sections shall be deemed not to contravene the provisions of this by-law.

4.05 **Exemptions to use of prohibited materials:**

- (a) **Barbed Wire:** Despite Sections 3.05, the use of barbed wire or other barbed material on a non-residential property that adjoins a residential property, street or public property is permitted provided that the barbed wire or other barbed material on the side of the fence next to the adjoining residential property, street or public property shall be appropriately located, masked or covered to provide protection against injury to persons and animals.
- (b) **Barbed Wire:** Despite section 3.05, the use of barbed wire or other barbed material on or around an agricultural property, industrial property, public utility, installation for the generation and distribution of electricity, pipeline valve, storage site for chemicals and explosives, sludge pit, property of any level of government or other property used for a similar or related purpose, regardless of the use of the adjoining properties. Barbed wire is permitted on the top of a fence erected on a lot used for commercial or industrial uses provided that it projects inwards to the area enclosed by the fence or on the top of a fence erected for security reasons around any facility owned, operated or maintained by any level of government or a utility provider.
- (c) **Electrified Wire:** Despite section 3.05, a person may construct a fence consisting wholly or partly of electrified wire material on or around an agricultural property for the purpose of keeping livestock, provided that the maximum electrical current complies with all other applicable legislation, regardless of the use of the adjoining

properties and shall be appropriately located, masked or covered to provide protection against injury to persons and animals.

4.06 **Exemptions to height:**

- (a) Sections 3.07 and 3.08 do not apply to a fence erected upon, or abutting land, which is used for a railway right-of-way or for hydro, telephone or utility installations or for public work installations which are hazardous to the public.
- (b) **Tennis Court:** The height restrictions in this by-law do not apply to fencing enclosures required for athletic activity areas, such as tennis courts.
- (c) **Gates:** Gates may exceed the height restrictions by a maximum of 0.3 metres.
- (d) **Fence Post Capping:** Capping of structural fence posts through decorative fence post caps or lighting may exceed the height restrictions by a maximum of 0.15 metres.

Section 5.00: Temporary Fences at Construction and Demolition Sites

- 5.01 Where in the opinion of the Chief Building Official a construction or demolition site presents a hazard to the public, the Chief Building Official may require the owner to erect such fences as the Chief Building Official deems appropriate to the circumstances.
- 5.02 In considering the hazard presented by the construction or demolition site, the necessity for fences and the height and characteristics of such fences, the Chief Building Official shall have regard for:
 - (a) The proximity of the building site to other occupied buildings;
 - (b) The proximity of the construction or demolition site to lands accessible to the public;
 - (c) The hazards presented by the construction or demolition activities and materials;
 - (d) The feasibility and effectiveness of site fences; and
 - (e) The duration of the hazard.
- 5.03 **Location:** Where construction or demolition is adjacent to an occupied building, street, public property or property to which the public has access, fencing should be provided around the construction or demolition to protect the public and existing buildings.
- 5.04 Every fence required by this section shall;
 - (f) Be erected so as to fully enclose all areas of the site which present a hazard;
 - (g) Create a continuous barrier that is sufficiently rigid to resist all anticipated loads to protect the public and be sufficient to reasonably deter and prevent unauthorized entry to the construction or demolition site;
 - (h) Have a height not less than 1.8 metres above grade at any point, unless the Chief Building Official determines that a greater minimum height is necessary;
 - (i) Be maintained in a vertical plane and in good repair;
 - (j) Construction fencing should be located entirely on the property of the construction or demolition, unless otherwise permitted by a municipal Street Occupancy Permit; and

- (k) The required fencing must be maintained for the duration of the construction project or at the discretion of the Chief Building Official.
- 5.05 **Effectiveness of existing fencing:** Existing fencing should be assessed in relation to the requirements of Sections 5.02 to 5.04. Where existing features provide adequate protection to the public, fencing may not be required.

Section 6.00: Enforcement, Offence and Penalties

- 6.01 **Enforcement:** This by-law may be enforced by every municipal law enforcement officer and police officer or any person appointed by Council.
- 6.02 **Offence and Penalty:** It is an offence for a person to contravene any provision of this by-law, and every person who contravenes this by-law is guilty of an offence and, on conviction, is liable to a fine in accordance with the provisions of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended and to any other applicable penalty.
- 6.03 **Offences:** Any person who contravenes any provision of this by-law is guilty of an offence, and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by Section 429 of the Municipal Act, 2001, S.O.2001, c.25 as amended.
- 6.04 **Multiple Offences:** The conviction of a person for the contravention or breach of any provision of this by-law shall not operate as a bar to the prosecution against the same person for any subsequent or continued breach or contravention of any provision of this by-law. Each day that the offence continues shall be deemed a separate and distinct offence.
- 6.05 **Court Order:** If this By-Law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 6.06 **Unsafe Fence:** If a fence becomes unsafe in the opinion of the Chief Building Official or a Municipal Law Enforcement Office, the City its officers, servants, employees or agents shall have the right to enter the property to pull down or repair or renew, at the expense of the owner of the fence, the unsafe fence. All costs for such actions may be added to the tax roll of the property and collected in like manner as municipal taxes.
- 6.07 **Fence Dispute:** All disputes between neighbours regarding a fence shall be administered and resolved under the Line Fences Act.

Section 7.00: Fulfillment of Owners' Obligations

- 7.01 **City May Complete Work:** Where an owner fails to comply with a notice within the specified time frame (subject to amendment or withdrawal), a Municipal Law Enforcement Officer may, in addition to any enforcement of this By-Law, cause the City's forces or agents to complete the work required by the notice, without further notice to the owner.
- 7.02 **Cost Recovery:** Where section 7.01 of this By-Law is invoked, all costs associated with the work shall be added to the tax roll of the property which is the subject matter of the notice and shall be collected in like manner as municipal taxes.

Section 8.00: Administration and Effective Date

- 8.01 **Administration of the By-law:** The Chief Building Official is responsible for the administration of this by-law.
- 8.02 **Effective Date:** This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this 24th day of October, 2017.

Andy Letham, Mayor

Ron Taylor, Acting City Clerk