

THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO. 5510/107/10

BEING A BY-LAW TO REGULATE FENCES
IN THE CITY OF PORT COLBORNE AND TO REPEAL
BY-LAW NO. 1170/117/81 AS AMENDED

WHEREAS Subsection 11 of the *Municipal Act*, 2001 S.O. 2006, c.32 as amended provides that the municipality may pass by-laws relating to the health, safety and well being of the inhabitants of the municipality, and to pass by-laws respecting structures, including fences, and

WHEREAS Subsections 445.1 and 446 of the *Municipal Act*, 2001 as amended, provides that if a municipality has the authority under this or any other *Act* or under a by-law under this or any other *Act* to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the persons expense, and may recover the costs by adding them to the tax roll and collecting them in the same manner as taxes,

NOW THEREFORE the Municipality Council of the Corporation of the City of Port Colborne enacts as follows:

1.0 SHORT TITLE

The short title of this bylaw is the "Fence By-Law".

2.0 DEFINITIONS

2.1 The following terms are defined for the purposes of this by-law:

"Chief Building Official" means the Chief Building Official appointed by the Council, pursuant to the *Building Code Act*, S.O. 1992, c.23 as amended or his or her designate.

"Construct" means to do anything in the erection, installation, extension or material alteration or repair.

"Corner Lot" means a lot having two or more street lines intersecting at an angle of not more than 135°, provided that where the street lines of a lot are curved, the angle of intersection of such street lines shall be deemed to be the angle formed by the intersection of the tangents to the street lines, drawn through the extremities of the interior lot lines, and the corner of the lot shall be deemed to be the point of intersection of the said tangents.

"Effective ground level" means the mean level of the ground within a radius of 1.25 metres of the fence location being considered.

"Electric fence" means a fence through which electricity passes.

"Fence or fencing" means any hedge, free standing wall, structure, partition, or barrier grown, consisting of or constructed of any material or combination of material enclosing, partly enclosing or dividing land or being used for decorative purposes.

"Fence of open construction" means a fence constructed so that at least one third of its vertical surface area is of open space, enabling motorists and pedestrians to have an unobstructed view through the fence.

"Fence of closed construction" means a fence constructed of solid material, without open spaces, such that views through the fence are substantially obstructed.

"Front lot line" means:

- the lot line that divides the lot from the street, including a private street but;
- in the case of a corner lot the shorter street line shall be deemed to be the front lot line and the longer street line shall be deemed to be a side lot line, but;
- in the case of a corner lot with two (2) street lines of equal length, the lot line that abuts the wider street, or abuts a Regional Road or Highway shall be deemed to be the front lot line, and in the case of both streets being under the same jurisdiction, or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line;
- in the case of a through lot, the front line shall be deemed to be the street line where the principal access to adjoining lots is provided.

“Front Yard” means a yard extending across the full width of a lot between the front lot line of such lot and the nearest part of any building or structure on such a lot.

“Required front yard” means the distance required to be maintained from the street line to the nearest part of any existing building or structure on a lot or in the case where there is no building or structure on the lot, the distance required by the Zoning By-law for any building to be constructed.

“Grade Level of the Street” shall mean the grade level of the centre of the travelled portion of any street.

“Hedge” means closely planted row of shrubs, bushes, vegetation, grasses or low trees enclosing, partly enclosing or dividing land or being used for a decorative purpose.

“Lot line” means any boundary line of a lot.

“Officer” means a municipal by-law enforcement officer, building inspector, chief building official or any other person appointed or employed by the City for the enforcement of the by-laws and includes a peace officer.

“Owner” means a registered owner, but also includes an occupant, lessee, tenant or any other person in charge of or in control of the premises.

“Person” includes an Owner and may be a natural person, firm, corporation, partnership or association.

“Privacy screen” means a visual barrier used to shield any part of a yard from view from any adjacent property or street.

“Side yard” means a yard extending from the front yard to the rear yard of a lot and from the side lot line of such lot to the nearest part of any building or structure on such lot.

“Sight triangle” means the triangular shape formed by street lines of a corner lot where such lot is located at the intersection on two or more streets and the line drawn from a point in one street to a point in the other street, each such point being 10.5 metres from the point of intersection of the streets measured along the said street lines provided that where the two streets do not intersect at a point, the point of the intersection of the street lines shall be deemed to be the intersection of the projected tangents to the street lines drawn through the extremities of the interior lot lines. Such triangular shape may also be called a daylighting triangle.

“Street” means a public highway or public road under the jurisdiction of the City, the Regional Municipality, or the Province of Ontario, and includes any highway as defined by the *Municipal Act, 2001* as amended from time to time, but does not include a lane or private right-of-way.

“Street line” means a lot line dividing a lot from a street and is the limit of the street allowance.

“Vehicle” means a motor vehicle, an automobile, a tractor, a truck, a motorcycle or motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power.

“Zone or zoned” means the Zone specified in the City of Port Colborne Zoning By-law No. 1150/97/81 and amendments or successors thereto.

3.0 HEIGHT OF FENCES

3.1 General Prohibition

No person shall construct or permit to be constructed or maintained in any residential, commercial, industrial, rural or agricultural zone a fence prohibited by this By-law.

3.2 Fences at Intersections and Corner Lots

No person shall construct or permit or permit to be constructed or maintained within a sight triangle, in any zone:

- (i) a fence of closed construction of a height greater than .75 metre above effective ground level; or
- (ii) a fence of open construction of a height greater than 1.0 metre above effective ground level.

3.3 Fence Heights in Residential Zones

3.3.1 No person shall construct or permit to be constructed or maintained within 4.5 metres of the street line in front yard: or within the required front yard if it is less than 4.5 metres.

- (i) a fence of closed construction of a height greater than 1.0 metre above effective ground level; or
- (ii) a fence of open construction of a height greater than 1.25 metres above effective ground level.

Where a building or a part of a building is closer to the front lot line than 4.5 metres, this distance shall be known as the Required front yard.

3.3.2 Except as otherwise provided in this By-law, no person shall construct or permit to be constructed or maintained any fence of a height greater than 2.0 metres above the effective ground level in any rear and /or side yards from the rear lot line to the front setback line as illustrated in Schedule "A" to this By-law.

EXCEPTION – When the rear yard of one property abuts the front yard of an adjoining property and the safety of passing pedestrians from vehicular movement may be affected by obstructed views, no person shall construct or permit to be constructed or maintained within 4.5 metres from a driveway of an adjoining lot:

- (i) a fence of closed construction that exceeds 1 metre in height above effective ground level,
- or
- (ii) a fence of open construction that exceeds 1.25 metres in height above effective ground level.

3.4 Fence Heights in Commercial and Industrial Zones

Subject to Section 3.2 of this By-law, and notwithstanding any other provisions of this By-law, a wire, ornamental or chain link fence not exceeding 2.6 metres in height above the effective ground level, may be constructed around the perimeter of any parcel of land in any commercial or industrial zone.

4.0 PROHIBITED MATERIALS

4.1 Barbed Wire

No person shall construct or permit to be constructed or maintained any fence composed wholly or partly of barbed wire, metal spikes or other sharp or pointed materials, along any street, or on lands located in a residential zone.

EXCEPTION –Barbed wire, metal spikes or any other sharp or pointed material may be used in any rural or agricultural zone; or in an industrial zone if the fence encloses the property and is 2.0 metres or more in height above effective ground level or at a height prescribed by the Chief Building Official.

4.2 Used Vehicle Tires

No person shall construct or permit to be constructed or maintained any fence composed wholly or partially of used vehicle tires in any zone.

5.0 PRIVACY SCREENS

5.1 No person shall construct or permit the construction of a privacy screen in all Residential Zones, except in accordance with the following regulations:

- (i) Maximum height 2.5 metres
- (ii) Setback from a street line: 9 metres
- (iii) Setback from a side lot line: 1 metre
- (iv) Setback from a rear lot line: 1.5 metres
- (v) Combined length of privacy screen on a lot not to exceed: 12 metres

6.0 GENERAL

6.1 No person shall construct or permit to be constructed or maintained a fence or privacy screen which is not in good repair; or having stained or painted surfaces that are peeling or worn.

6.2 No person shall construct or permit to be constructed or maintained a fence unless it is constructed using suitable materials. Provided however, used chain link, hedge wire fencing and split wooden rails may be reused in the construction of a fence.

6.3 No person shall construct or permit to be constructed or maintained an electric fence, except in an agricultural or rural zone.

6.4 Where a non-residential zone abuts a residential zone, the provisions of this By-law governing fences in a non-residential zone shall prevail.

6.5 Fences around pools and swimming pools shall comply with the Municipality's Swimming Pool By-law in effect at the time, but where this by-law conflicts with the Swimming Pool By-law this By-law shall take priority.

6.6 All fences, hedges, gardening walls, retaining walls, natural and non-natural barriers erected, constructed or grown shall be solely contained within the limits of the owner and/or owner's property including all foundations and footings.

7.0 EXEMPTIONS

7.1 The provisions of this By-law relating to the height of fences, except the provisions of Section 3.2 of this By-law, do not apply to land owned or leased and used by:

- (i) The Corporation of the City of Port Colborne.
- (ii) Regional Municipality of Niagara.
- (iii) Hydro One and Canadian Niagara Power.
- (iv) Any department or agency of the Federal, or Provincial Government.
- (v) The District School Board of Niagara.
- (vi) The Niagara Catholic District School Board.
- (vii) Any person for the purpose of temporarily protecting any excavation or construction site.

8.0 RELIEF FROM BY-LAW

8.1 Any person may apply to Council to request relief from any provision of this By-law and the Council shall consider such application in an expeditious manner.

8.2 The Schedule of Fees shall be set out and attached as Schedule 'B' to this By-law.

8.3 The full amount of the application fee shall be payable and collected along with the Owner's request for relief, and is non-refundable regardless of whether Council approves the request.

8.4 The following are required before consideration for relief can be reviewed:

1. Application fee payable to the "City of Port Colborne"
2. Fully completed application form
3. Site plan with all required measurements
4. On-site inspection by Officer

9.0 ENFORCEMENT

9.1 The Chief Building Official, Municipal Law Enforcement Officer or their designate shall enforce the provisions of this By-law and are authorized to enter on land at any

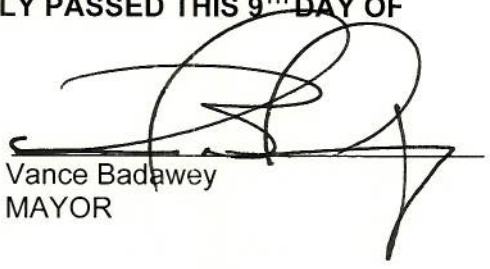
reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law is being complied with.

- 9.2 No person shall obstruct an Officer in carrying out an inspection under the authority of this By-law.
- 9.3 Where an Owner fails to comply with any provision of this By-law, an Order may be issued to the Owner requiring compliance. The Order will give reasonable particulars of the reasons that the fence does not comply and indicate the time for complying with the Order and giving notice that, if the Order is not complied with within that time, the City may carry out the Order at the Owner's expense.
- 9.4 An Order may be personally delivered or served by Registered Mail. Where an Order is mailed, the Order shall be deemed delivered on the earlier of receipt of the Order by the addressee or the fifth day following the date of mailing, whether actually received or not.
- 9.5 Where an Order has been issued and compliance has not been achieved within the required time period as set out in the Order the City may, through its employees or agents or persons acting on its behalf, enter upon the land to remove the fence or take the steps required to effect compliance, and all expenses incurred may be added to the tax roll and collected from the Owner of the property in the same manner as municipal taxes.
- 9.6 Every Person who contravenes any of the provisions of this By-law is guilty of an offence and, upon conviction is liable to the penalties as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P.33.

10.0 ADMINISTRATION AND INTERPRETATION

- 10.1 The provisions of By-law 1170/117/81 as amended continue to apply to any existing fence in good repair that is in compliance or where a variance has been granted by Council and continues to comply with the requirements of By-law 1170/117/81 on the date of passing of this By-law, until such time as the existing Fence is replaced or undergoes substantial repair.
- 10.2 If there is a conflict between a provision of this By-law and a provision of any other City by-law, the provisions in this By-law shall apply.
- 10.3 Pursuant to the provisions of Section 23.1 to 23.5 of the *Municipal Act*, 2001 the Clerk of the City is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the By-law and schedules as may be necessary after the passage of this By-law.
- 10.4 By-law No. 1170/117/81, and amendments thereto, is hereby repealed.
- 10.5 This by-law shall come into force and effect on the date of passage.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 9TH DAY OF AUGUST 2010


Vance Badawey
MAYOR


Ashley Grigg
CLERK