

THE CORPORATION OF THE TOWN OF TECUMSEH

BY-LAW 2003-57

Being a by-law to provide for the regulation
of fences within the municipality.

WHEREAS, Section 8 of the *Municipal Act*, S.O. 2001, c.25 states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS, Section 9 (3) of the *Municipal Act*, S.O. 2001, c.25 states that a by-law under section 11 respecting a matter may (a) regulate or prohibit respecting the matter; and (b) as part of the power to regulate or prohibit respecting the matter, require persons to do things respecting the matter, provide for a system of licences, permits, approvals or registrations respecting the matter and impose conditions as a requirement of obtaining, continuing to hold or renewing a licence, permit, approval or registration;

AND WHEREAS, Section 10 (1) of the *Municipal Act*, S.O. 2001, c.25, provides that a by-law may be general or specific in its application and may differentiate in any way and on any basis a municipality considers appropriate;

AND WHEREAS, pursuant to Section 11 of the *Municipal Act*, S.O. 2001, c.25, a single tier municipality may pass a by-law within the Structures including fences and signs, sphere of jurisdiction, for the regulation of fences;

AND WHEREAS, Section 98(1) of the *Municipal Act*, S.O. 2001, c.25, provides that a local municipality may provide that the *Line Fences Act* does not apply to all or any part of the municipality;

AND WHEREAS, the Council of the Corporation of the Town of Tecumseh considers it desirable to pass such a by-law;

NOW THEREFORE, the Council of the Corporation of the Town of Tecumseh, hereinafter referred to as the Town enacts as follows:

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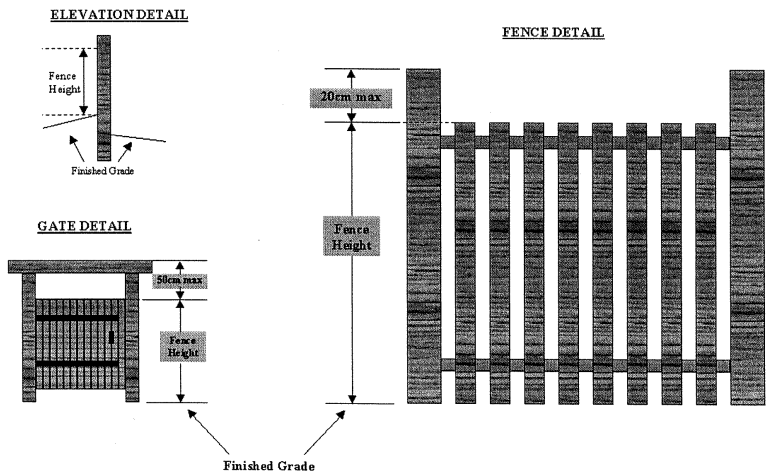
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SECTION 1 – DEFINITIONS

1.1 In this By-law;

- (a) “agricultural property” means property zoned agricultural in the Town’s Zoning By-laws.
- (b) “established building line” means the straight line joining the nearest part of the wall of the adjacent dwelling to the nearest point of the wall of the next adjacent dwelling.
- (c) “exterior face” when used in conjunction with a fence means the outer side of the fence by which a property boundary is defined or a pool enclosed.
- (d) “fence” means any structure comprised, of posts, boards, rails, wire, masonry, plastic or other similar materials or any combination thereof used to define a property boundary or to enclose or partially enclose any outdoor area or any privately owned outdoor swimming pool and includes.
- (e) “fence height” means the vertical distance between the finished grade of the ground and the top of the fence. Any fence post or any decorative fence post feature may project a maximum of 20 centimeters (7.9 inches) above the fence height. The fence gate shall not exceed the maximum permitted height of the fence and any decorative gate feature located above the gate may project a maximum of 50 centimeters (19.7 inches) above the maximum fence gate height. The height of the fence shall be measured from the higher adjacent grade where there is a grade difference on each side of the fence.

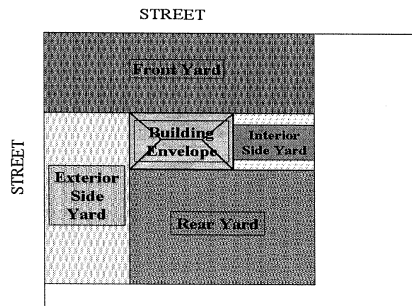
Section 1.1 (d) Fence Height



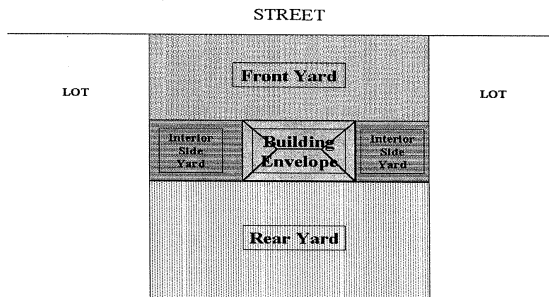
- (f) “guard” shall have the same meaning and requirements as found in the Ontario Building Code., Ontario Regulation 403/97 as amended by O.Reg 22/98 and O.Reg. 102/98 and any subsequent amendments or regulations thereto.
- (g) “industrial” / “business park property” means property zoned “industrial” or “business park” in the Town’s Zoning By-Laws.
- (h) “non-residential property” means property zoned other than agricultural residential, business park or industrial in the Town’s Zoning By-Laws.
- (i) “owner” includes a tenant, lessee, registered owner, occupier or such other person in charge of or in possession of property.
- (j) “person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.
- (k) “privately-owned outdoor swimming pool” means any body of water in or above the ground located outdoors on privately-owned property, contained by artificial means and used and maintained for the purpose of swimming, wading, diving or bathing but does not include an above ground wading pool having a depth of .46 meters (18”) or less.
- (l) “property” means real property located in the Town.
- (m) “property line” means the legal boundary of a lot.
- (n) “residential property” means land zoned residential in accordance with the Town’s zoning By-laws.
- (o) “residential component of a property” means the area of a property being fenced for the purpose of enclosing or partially enclosing a residential use and associated accessory uses in other than a residential zone.
- (p) “Town” means the Corporation of the Town of Tecumseh.
- (q) “yard, exterior side” means the side yard of a corner lot, immediately adjoining a public street, which side yard extends from the front yard to the rear property line between the exterior property line and the nearest wall of the main building.

- (r) “yard, front” means the yard extending across the full width of a property between the front property line and the nearest wall of the main building and where a property has frontage on two or more streets, the front yard means the yard between the shorter property line abutting a street and the nearest wall of the main building.
- (s) “yard, required front” means the yard extending across the full width of a property between the front property line and the minimum front yard distance as determined from the Town’s zoning by-laws. Where a property has frontage on two or more streets, the required front yard means the yard between the shorter property line abutting a street and the minimum required front yard distance as determined from the Town’s Zoning By-laws.
- (t) “yard, rear” means the yard extending across the full width of a property commencing at the rear property line and extending to the rear wall of the main building, or, in the case of a corner lot, the yard extending from the exterior side yard to the side property line commencing at the rear property line and ending at the rear wall of the main building; and,
- (u) “yard, interior side” means the yard between the side property line and the main building between the front yard the rear yard.

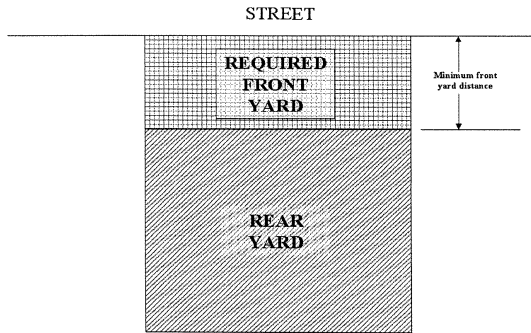
CORNER LOT



INTERIOR LOT



VACANT LOT



SECTION 2 –GENERAL

- 2.1 This By-law may be referred to variously as the “Fencing By-law” or the “By-law”.
- 2.2 The provisions of this By-law shall apply to all lands within the boundaries of the Town as are now or hereafter legally constituted.
- 2.3 The provisions of the *Line fences Act R.S.O. 1990* shall not apply to all lands within the boundaries of the Town as are now or hereafter legally constituted.
- 2.4 Nothing in this By-law shall serve to relieve any person from the obligation to comply with any other applicable law.
- 2.5 The provisions of this By-law shall not apply to a fence lawfully erected prior to the final passing of this By-law.
- 2.6 The provisions of this By-law shall not apply to an acoustical fence or any other type of fence which may be required by the Town or any other governmental authority, whether by way of sight plan control agreement, development agreement, subdivision agreement or otherwise.
- 2.7 The provisions of this By-law shall not apply to any fence constructed on, federal, provincial or municipally owned property.
- 2.8 The Town may by agreement permit a fence that does not otherwise comply with the provisions of this By-law.

- 2.9 If any court of competent jurisdiction finds any provision of this By-law is invalid or is ultra vires of the jurisdiction of the Town, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this By-law.
- 2.10 By-law 2000-45 as amended of the Corporation of the Town of Tecumseh is hereby repealed.
- 2.11 This By-law shall come into force and effect when it is finally passed.

SECTION 3 – ADMINISTRATION AND ENFORCEMENT

- 3.1 The provisions of this By-law shall be administered by the Town's By-law Enforcement Officers or any employee or agent of the Town acting under their direction.
- 3.2 The By-law Enforcement Officers or any employee or agent of the Town acting under their direction may enter upon lands and premises at any reasonable time for the purpose of determining or effecting compliance with any provision of this By-law.
- 3.3 No person shall excavate for or erect, or cause to be excavated for or erected, a fence unless he or she has first obtained a fence permit from the Town. The cost of which shall be as provided for in the Town's Building By-law.
- 3.4 Where the By-law Enforcement Officers or any employee or agent of the Town acting under their direction finds a violation of any provision of this By-law, the By-law Enforcement Officer or any employee or agent of the Town acting under their direction may issue an order to comply with this By-law.
- 3.5 Where a person is in default of an order issued pursuant to this By-law, such matter or thing may be done by the Town at the person's expense and the Town may recover the costs by action or by adding the costs to the tax roll and collecting the costs in the same manner as taxes.
- 3.6 Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction thereof is liable to a fine in the maximum amount provided for by the *Provincial Offences Act, R.S.O. 1990, c.P.33*, (hereinafter called the "Act") as may be amended from time to time.
- 3.7 Notwithstanding the provisions of section 3.5 above, every person who contravenes any provision of this By-law is guilty of an offence and can, at the option of the Town be prosecuted pursuant to the provisions of Part 1 of the Act, and upon conviction

thereof is liable to a set fine as determined in accordance with the procedure delineated in the Act and regulations passed thereunder.

SECTION 4 – FENCING GENERAL

- 4.1 Every application for a permit to construct a fence shall be made in the form prescribed by the Town and shall be accompanied by the prescribed permit fee, a plan showing the exact location of the fence in relation to the property lines and buildings, and provide full details of the nature of the construction of the fence.
- 4.2 A fence permit shall not be issued by the Town unless the fence complies with all applicable laws.
- 4.3 The minimum fence height on any property shall be 1 metre (3.3’).
- 4.4 A fence shall not be constructed of any barbed wire.
- 4.5 No person shall erect, have, permit, construct, or maintain a fence located closer than 9 meters (29.5 feet) to an intersection. For the purpose of this subsection, intersection shall mean the point of intersection of two or more property lines that about a street.
- 4.6 Every fence shall be constructed of structurally sound material and shall be constructed in accordance with standard building practices.
- 4.7 No person shall erect, have, permit, construct or maintain a fence that creates an unsafe condition.
- 4.8 No person shall, erect, have, permit, construct or maintain a fence which, by reason of location or design, obstructs the vision of drivers, either when leaving a roadway or when entering a roadway from another roadway or driveway, or which obstructs or detracts from the visibility or effectiveness of any traffic sign or control device on a public street or which, for any other reason, constitutes a hazard.
- 4.9 No person shall erect, have, permit, maintain or construct on any property a fence, which has an inferior appearance or quality on the exterior side of the fence, which faces an adjoining property. For the purposes of this subsection, the fact that the horizontal or vertical fence support members are located on the side of the fence facing the adjoining property shall not in and of itself be deemed to constitute an inferior fence appearance or an inferior fence quality.

- 4.10 No person shall erect, have, permit, maintain or construct on any property a fence carrying an electrical charge. Notwithstanding the above on agriculturally zoned property an approved electrical fence shall be permitted for the enclosure of livestock.
- 4.11 Notwithstanding anything in this By-law to the contrary, where a swimming pool is located in a front yard, the provisions for the fencing of a swimming pool required by Section 6 of this By-law shall apply.
- 4.12 No person shall place water in or cause water to be placed in a privately-owned outdoor swimming pool or allow water to remain therein until such time a fence in accordance with Section 6 has been erected.
- 4.13 The provisions of Section 5 of this By-law shall apply when a fence is erected to delineate the residential component of a property.
- 4.14 The maximum fence height shall be 1.22 meters (4.0 feet) north of the established building line and the construction shall be of open chain link construction (or of material similar in nature) for property fronting on the north side of Riverside Drive irrespective of zoning classification.
- 4.15 For the purpose of 4.14 above a fence shall include a hedge of closely planted trees bushes or shrubs and shall be a prohibited fence.

SECTION 5 - FENCING ON RESIDENTIAL PROPERTY

- 5.1 No person shall erect, have, permit, maintain or construct on any residential property a fence greater than 1.9 meters (6.2 feet) in height in any interior side yard, exterior side yard or rear yard
- 5.2 No person shall erect, have, permit, maintain or construct on any residential property a fence greater than 1.22 meters (4.0 feet) in height in any front yard. For the purposes of application of this provision on vacant lots the height restriction for front yard fences shall commence at the point where the required front yard abuts the rear yard.

SECTION 6 - FENCING OF PRIVATELY-OWNED OUTDOOR SWIMMING POOLS

- 6.1 Every owner of a privately-owned outdoor swimming pool including pools in front yards shall erect and maintain, or cause to be erected and maintained, a fence which;

- a) shall not be less than 1.22 meters (4.0 feet) in height and shall not exceed 1.9 meters (6.2 feet) in height,
 - b) shall be constructed of chainlink, vertical board, iron, aluminum, plastic or a combination thereof as provided in this By-law or such other material, design or construction as will provide an equivalent degree of safety and which is approved, by the Chief Building Official of the Town,
 - c) shall be constructed so that the distance between the finished grade of the ground and the bottom of the fence does not exceed 10 centimeters (3.93 inches),
 - d) shall completely enclose the pool and may include decks, walls and guards.
- 6.2 A swimming pool fence shall be set back a minimum distance of 1.2 meters (3.9 feet) from the swimming pool wall;
- 6.3 A swimming pool fence if of chain-link construction shall;
- a) have a maximum 5.0 centimeter (2 inch) mesh consisting of 12 gauge galvanized steel wire or 14 gauge steel wire covered with vinyl coating or such other equivalent material ;
 - b) have galvanized steel supporting posts spaced at no more than 3 meters (9.8 feet) intervals;
 - c) have end posts and corner posts at least 4.8 centimeters (1.9 inches) in diameter extended a minimum depth of .9 meters (3 feet) below grade encased in concrete;
 - d) have intermediate posts of at least 38 millimeters (1.5 inches) in diameter extended a minimum depth of .9 meters (3 feet) below grade encased in concrete; and
 - e) have top and bottom rails made of galvanized steel pipe having a minimum diameter of 3.2 centimeters (1.25 inches) it being understood that a galvanized steel tension rod having a minimum diameter of .5 centimeters (.2 inches) may be substituted for the bottom rail.
- 6.4 A swimming pool fence if of vertical board construction shall:
- a) have vertical boarding not less than 2.5 centimeters (1inch) by 10 centimeters (4 inches) nominal spaced not more than 10.2 centimeters (4 inches) apart attached to a top and bottom rail in such a manner as not to facilitate climbing from the exterior face;
 - b) be supported by posts not less than 10 centimeters (4 inches) by 10 centimeters (4 inches) nominal spaced not more than 2.5 meters (8.2 feet)

- apart and extended a minimum depth of 1.2 meters (3.9 feet) below grade encased in concrete;
- c) be treated with a wood preservative below grade or consist of pressure treated wood below grade; and,
 - d) have top and bottom rails not less than 5 centimeters (2 inches) by 10 centimeters (4 inches) nominal;
- 6.5 A swimming pool fence if of construction other than chain-link or vertical board construction shall:
- a) be constructed so that the rigidity of the fence is at least equal to that specified for chain-link and vertical board construction;
 - b) be permitted to have exposed structural or other members or parts thereof on the outside of the fence attached in such a manner as not to facilitate climbing from the exterior face;
 - c) have a maximum of 10 centimeters (4 inch) openings in the fence or gates.
- 6.6 A swimming pool fence may incorporate one or more gates of equivalent material and construction as the fence and every such gate shall:
- a) not be less than 1.22 meters (4.0 feet) in height;
 - b) be supported by substantial hinges and equipped with self-closing and self-latching devices placed at the top and on the inside of the gate.
- 6.7 A swimming pool fence may incorporate all or a portion of the wall of a building but no entrance to the pool area shall be permitted through such wall unless the wall is set back a minimum distance of 1.5 meters (4.9 feet) from the swimming pool wall.
- 6.8 A swimming pool fence may incorporate decks and guards constructed in such a manner that the possibility of climbing from the exterior face is consistent with the fencing provisions found in this section. The maximum height of an enclosure constructed under this section shall be 2.3 meters (7.5 feet).
- 6.9 Notwithstanding the provisions of subsection 6.1 of this By-law, where by reason of the nature of construction of a privately-owned outdoor swimming pool it is necessary to fill the swimming pool with water during the construction of the swimming pool, the owner, in lieu of constructing a swimming pool fence as prescribed herein, may erect and maintain, or cause to be erected and maintained, a temporary fence completely around the swimming pool until construction is completed and, upon completion of such construction, the owner shall immediately replace, or cause to be replaced, the temporary fence with a swimming pool fence as prescribed in this By-law.

- 6.10 The temporary fence referred to in Subsection 6.9 of this By-law shall;
- (a) not be less than 1.22 meters (4.0 feet) in height;
 - (b) be supported by steel T-bar posts spaced at no more than 3 meter (9.8 feet) intervals;
 - (c) have a 9 gauge galvanized steel wire located at the top and bottom of the fence; and
 - (d) be constructed of such other material that will provide an equivalent degree of safety as approved, in writing, by the Chief Building Official of the Town.

SECTION 7 - FENCING OF NON-RESIDENTIAL PROPERTY

- 7.1 No person shall erect, have, permit, maintain or construct on any non-residential property a fence greater than 2.2 meters (7.2 feet) in height in any interior side yard exterior side yard or rear yard.
- 7.2 No person shall erect, have, permit, maintain or construct on any non-residential property a fence greater than 1.22 meters (4.0 feet) in height in any front yard. For the purposes of application of this provision on vacant lots the height restriction for front yard fences shall commence at the point where the required front yard abuts the rear yard.

SECTION 8 - FENCING OF AGRICULTURAL PROPERTY

- 8.1 No person shall erect, have, permit, maintain or construct a fence greater than 1.9 meters (6'2 feet) in height on land primarily used for farming or agricultural purposes.

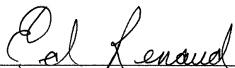
SECTION 9 – FENCING OF INDUSTRIAL / BUSINESS PARK PROPERTY

- 9.1 No person shall erect, have, permit, maintain or construct on any industrial property a fence greater than 3.1 meters, (10.2 feet) in height in any interior side, exterior side or rear yard
- 9.2 No person shall erect, have, permit, maintain or construct on any industrial property a fence greater than 1.22 meters (4.0 feet) in height in any front yard. For the purposes of application of this provision on vacant lots the height restriction for front yard fences shall commence at the point where the required front yard abuts the rear yard.

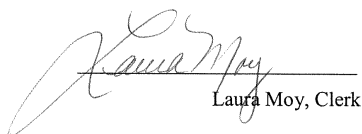
SECTION 10 - ENTRY TO ADJOINING LANDS

- 10.1 Subject to Section 10.2 of this By-law, an owner or shared owner of any fence in the Town or the agent or employee of such owner is hereby permitted to enter upon any adjoining land for the purpose of making repairs, alterations or improvements to such fence, but only to the extent necessary to effect such repairs, alterations or improvements.
- 10.2 Except with the consent of the occupier of the adjoining land, no person shall enter upon such adjoining property pursuant to Section 10.1 of this By-law without at least 48 hours before such entry, notifying the occupier of such adjoining property, where such notification is capable of being given having regard to all the circumstances.
- 10.3 Every owner or occupant who enters upon any adjoining property pursuant to Section 10.1 of this By-law shall leave the property in the same condition it was in prior to such entry.
- 10.4 Nothing in this By-law affects a right to bring a civil action for damages or otherwise arising out of the entry upon any adjoining property.
- 10.5 No person shall, without having statutory authority so to do, erect, have, permit, construct or maintain in or upon any street or highway in the Town any fence, pole, post, pillar or wire or other construction.
- 10.6 Any fence, pole, post, pillar or wire or other construction erected, constructed or maintained contrary to the provisions of Section 10.5 of this By-law shall be removed by the person upon whom notice is served within 2 weeks after receipt of notice, in writing, served upon the owner or occupier of the adjoining premises by registered mail and in the event of non-compliance with such notice, a By-law enforcement officer of the Town may cause the same to be removed at the expense of the said owner or occupier and such expense shall be a debt due by such owner or occupier to the Town and the same may be recovered in like manner as municipal taxes.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
12th DAY OF AUGUST, 2003.**



Ed Renaud, Mayor



Laura Moy, Clerk