

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 127-2017

Being a By-law to Regulate the Height, Location and Description of Fences by the Corporation of the Town of Kingsville

WHEREAS Sections 11(1), 7 and 15(4) of the *Municipal Act, S.O. 2001, c. 25*, as amended, authorizes municipalities to pass by-laws respecting fences which includes the authority to prescribe the height and description of fences on all properties and to require owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools;

NOW THEREFORE, the Council of The Corporation of the Town of Kingsville enacts as follows:

PART I

INTERPRETATION

1.1 In this by-law:

- (1) **"Building"** shall mean any structure greater than 108 square feet, whether temporary or permanent, used or intended for sheltering any use or occupancy but shall not include a fence, travel trailer, camping trailer, truck camper, motor home or tent;
- (2) **"Chief Building Official"** shall mean the officer or employee of the Town charged with the duty of enforcing the provisions of the Ontario Building Code Act and the provisions of this By-law;
- (3) **"Corner lot"** shall mean a lot situated at the intersection of or abutting upon, two or more streets provided that the angle of intersection of such streets is not more than one hundred and thirty-five (135) degrees and each of which is at least 30 feet wide; where such intersecting sides are curved, the angle of intersection of the adjacent sides shall be deemed to be the angle formed by the intersection of the tangents to the street lines, drawn through the extremities of the front lot line and the exterior lot line;
- (4) **"Council"** shall mean the Council of The Corporation of the Town of Kingsville;
- (5) **"Dwelling"** shall mean a building, occupied or designed to be occupied, exclusively as a home, residence or sleeping place by one or more persons;
- (6) **"Fence"** shall mean any continuous barrier made of chain, wood, stone, masonry, lattice work, screen or other similar material used to enclose or divide in whole or in part a yard or other land or constructed, installed along the perimeter of lands so as to give the inference that the barrier is intended to delineate the boundaries of the lands and also includes a privacy screen as defined in this By-law. Any berm, retaining wall or other such man-made structure upon which a fence is built shall be deemed to be part of the fence;
- (7) **"Front yard"** shall mean that part of any lot extending across the full width of the lot and lying between the street and the nearest wall of any dwelling or other main building located on the lot;
- (8) **"Gate"** shall include a door or other device constructed to be self-closing and with a self-latching device that may be opened to gain access to an area enclosed by a fence;

- (9) **“Height”** shall mean the vertical distance between the grade level adjacent to the fence and the highest point of the fence but does not include the fence posts;
- (10) **“Lot”** shall mean any parcel or tract of land described in a deed or other instrument legally capable of conveying land;
- (11) **“Open type construction”** means a fence constructed so that at least one half of the vertical surface area is open space, enabling a clear view through such fence, including material such as wrought iron or chain link;
- (12) **“Owner”** shall include any person who has lawful possession of any lands or premises;
- (13) **“Permit”** shall mean a permit issued by the Chief Building Official certifying approval of plans for swimming pool fences;
- (14) **“Person”** shall mean an individual, firm or corporation, or any group or association of individuals;
- (15) **“Privacy screen”** means a visual barrier used to shield any part of a yard from view from any adjacent yard, parcel or Highway;
- (16) **“Rear yard”** shall mean that part of any lot extending across the full width of the lot and lying between the rear boundary of the lot and the nearest wall of any dwelling or other main building located on the lot;
- (17) **“Side yard”** shall mean that part of any lot that is not part of the front yard or rear yard lying between the side lot line and any dwelling or other main building located on the lot;
- (18) **“Sight visibility triangle”** means the triangular space included between the street lines for a distance of 9.14 m from the point of intersection or 4.57 m where an alley intersects another alley or where an alley intersects a street or where private driveway intersects a street and or sidewalk;
- (19) **“Street”** shall mean a common and public street, road, highway or commons vested in the municipality, the county, the province or any other public authority having jurisdiction over the same and includes a bridge or any other structure forming part of a street on, over or across where a street passes, including a private road or alley;
- (20) **“Swimming pool”** shall mean any manmade structure that may be used to contain water for the purpose of swimming, wading or bathing purposes but shall not include:
- a) a manmade pond;
 - b) irrigation lagoon that is used for agricultural purposes;
 - c) a temporary excavation below the water table; or
 - d) a portable wading pool that is emptied after each use;
- (21) **“Swimming pool fence”** shall mean any fence that encloses in whole or in part, a swimming pool, and includes any temporary enclosure erected during the construction of any swimming pool and includes a gate attached to the fence;
- (22) **“Temporary enclosure”** shall mean a device that is intended to temporarily perform the functions of a fence, and is subject to the approval of the Chief Building Official;
- (23) **“Through lot”** shall mean a lot that is not a corner lot and has frontage on more than one street, in which case, the front yard requirements contained herein shall apply on each street;
- (24) **“Town”** shall mean The Corporation of the Town of Kingsville;

(25) **“Waterway”** shall mean a natural or manmade channel, body or stream of water;

(26) **“Zone”** shall mean an area as delineated on a zoning map schedule and established and designated by any by-law passed under Section 34(1) of the Planning Act, R.S.O. 1990, c.P.13.

PART II

GENERAL

- 2.1 No person shall erect or cause to be erected a swimming pool fence without first obtaining a permit from the Chief Building Official. The charge for such permit shall be in accordance with the Fees By-law, as amended.
- 2.2 No person shall construct or reconstruct or cause to be constructed or reconstructed any fence that is not in compliance with this by-law.
- 2.3 No person shall use or cause to be used razor wire, barbed wire or any other similar material in the construction of any fence unless specifically permitted by this by-law.
- 2.4 No person shall use, or cause to be used, electric current as a part of or in conjunction with any fence unless specifically permitted by this by-law.
- 2.5 No person shall post or exhibit placards, playbills, posters or graffiti on any fence.
- 2.6 No person shall erect a fence that is not uniform in appearance on each side.

PART III

GENERAL PROVISIONS – RESIDENTIAL ZONES

- 3.1
 - (1) No person shall construct, erect, maintain or permit to be constructed, erected or maintained on any property zoned Residential, a fence which exceeds a height of 1.83 m in any rear yard , interior or exterior side yard.
 - (2) No person shall construct, erect, maintain or permit to be constructed, erected or maintained on any property zoned Residential, a fence which exceeds a height of 0.91 m in any designated front yard.
 - (3) Notwithstanding Sections 3.1(1) and 3.1(2) above, fences shall be required to comply with all sight visibility triangle regulations as set out in this by-law.
- 3.2 Notwithstanding Section 3.1, but subject to the provisions of Section 3.9 and Section 6.3 of this by-law:
 - a) archways forming part of an entrance may exceed the height restrictions to a maximum of 2.3 m;
 - b) decorative items on structural posts may exceed the prescribed height restrictions to a maximum of 15.2 cm;
 - c) a fence may be erected to enclose a tennis court or similar private sports facility, not including a pool that is:
 - i. no higher than 3.66 m;
 - ii. constructed of chain link with adequate posts, support wires and bracing of a corrosive resistant or treated material; and is
 - iii. not closer than 0.61 m to any property line; and

- d) a boundary fence in side yards or rear yards may be 2.13 m in height provided any portion of the fence over 1.83 m is of open type, decorative construction.

3.3 In a Residential zone which permits semi-detached or townhouse dwelling units, privacy screens are permitted when erected upon a deck or platform in a rear yard which is permitted provided:

- a) the maximum height of the privacy screen shall be 1.83 m measured from the floor of the deck;
- b) the maximum projection of a privacy screen or fence from the building shall be 3.66 m;
- c) a privacy screen shall be set back a minimum of 0.91 m from any property line; and
- d) no privacy screen on a corner lot shall extend closer to the street than the main wall of the building nearest the street.

SWIMMING POOL FENCES

3.4 Every owner of a lot on which a swimming pool is located shall construct and maintain, or cause to be constructed and maintained, a swimming pool fence.

3.5 Every person who constructs, or causes to be constructed, a swimming pool fence shall construct the swimming pool fence so as to prevent access under, over or through the fence except by way of a gate.

3.6 No person shall construct or cause to be constructed a swimming pool fence, unless such swimming pool fence complies with the following regulations:

- a) The minimum required height of a swimming pool fence shall be 1.22 m as measured from the grade level outside and immediately adjacent the swimming pool fence;
- b) The maximum permitted height of a swimming pool fence shall be 1.83 m;
- c) Every swimming pool fence shall be constructed so that all horizontal or diagonal structural members of the fence are located on the pool side of the fence and the swimming pool fence shall not have openings, holes or gaps large enough to facilitate climbing;
- d) If a swimming pool fence is to be constructed of chain link material, the chain link material shall have an open diamond mesh not exceeding 3.81 cm;
- e) A dwelling or building may be utilized as part of a swimming pool fence;
- f) Every swimming pool gate shall be equipped with a self-closing/self latching device on the top of the gate on the swimming pool side of the gate;
- g) Section 3.6 (g) shall not apply to the door of any dwelling or building which forms part of the enclosure;
- h) Nothing shall be placed at or near the exterior side of a fence located on the same property that might facilitate the climbing of the swimming pool fence;
- i) Sun-decks or walkways may be used as part of a swimming pool fence provided that they are constructed so as not to facilitate climbing and are a minimum of 1.22 m above the immediately adjacent grade level and if equipped with a gate, such gate shall be constructed in accordance with Section 3.6 (g);

- j) Once a swimming pool is filled with water it must be fenced. A temporary enclosure is permitted in lieu of a swimming pool fence, but must be replaced with a permanent fence in accordance with Section 3.4, 3.5 and 3.6 within fourteen (14) days of the pool being filled with water.
- 3.7 Every owner of a lot containing a swimming pool shall ensure that the gate providing access through the swimming pool fence is locked whenever the swimming pool is not in use.
- 3.8 The provisions of this by-law requiring the erection of a fence shall not apply to an above ground pool that complies with the following standards:
 - a) sides of not less than 1.22 m above grade; and
 - b) the point where a user of the above ground pool gains access to the pool is protected by a gate as outlined by Section 3.6 (g).

RESIDENTIAL ZONES ALONG A WATERWAY

- 3.9 On lots abutting a waterway, no person shall construct, or cause to be constructed:
 - a) a fence that exceeds 0.91 m in height in any front yard;
 - b) a fence that exceeds 1.83 m in height in any side yard; or
 - c) a fence in any rear yard except in compliance with the following height regulations:
 - i. a fence, not exceeding 1.83 m in height, located in any yard abutting a waterway may extend a maximum of 6 m from the main wall of the dwelling on the same property closest to the water, beyond the 6 m maximum a fence shall be limited to a maximum 1.22 m in height and be of an open type construction. At no time is a fence to be located closer than 3 m to the water's edge.
- 3.10 On lots abutting a waterway, every swimming pool fence must comply with Sections 3.1, 3.4, 3.5 and 3.6 of this by-law.
- 3.11 Notwithstanding Section 3.10 on lots abutting a waterway, the portion of the property open to the waterway is permitted to be unfenced provided that there is no gap between the swimming pool fence and the said waterway or a break wall.
- 3.12 On lots abutting a waterway, a hedge, located in any yard abutting the waterway, shall be deemed to be a fence.

PART IV

GENERAL PROVISIONS – COMMERCIAL/INDUSTRIAL/INSTITUTIONAL ZONES

- 4.1 Unless permitted by a site plan agreement or any other development agreement executed by the Town, a fence on any property zoned Commercial, Industrial or Institutional shall not exceed 2.44 m in height.
- 4.2 Barbed wire may be placed on the top of a fence on any property zoned Commercial, Industrial or Institutional that does not abut a residential zone, provided that the said fence is a minimum of 1.83 m in height.

PART V

GENERAL PROVISIONS – AGRICULTURAL ZONE

- 5.1 Properties in an Agricultural zone containing a residential use with a lot area of less than 1 ha and abutting other similar lots shall comply with Part III of this by-law.
- 5.2 Barbed wire may be used in the construction of a fence on any property zoned Agricultural that does not abut a residential zone.
- 5.3 Nothing in Section III of this By-law shall apply to the construction of a fence to contain livestock on a lot larger than 1 ha.
- 5.4 An electrified fence may be erected on any property zoned Agricultural provided such fence:
 - a) has a maximum 12 volt trickle charge;
 - b) is designed and erected solely to contain animals; and
 - c) has attached thereto, at approximate 30.48 m intervals, a sign warning that the fence carries electricity.

PART VI

SALVAGE YARD FENCING

- 6.1 Notwithstanding any other provisions of this By-law, no person shall establish, operate or maintain or cause or permit the establishment, operation or maintenance of a salvage yard unless the land on which the salvage yard is located is fenced.
- 6.2 No person shall erect or construct or cause or permit to be erected or constructed, fence on a lot used as a salvage yard except in accordance with the following provisions:
 - a) Except as provided in clause (c) of this subsection, a fence within any front, rear or side yard shall be not less than 3.05 m and not greater than 4.6 m in height;
 - b) A fence to enclose a front yard shall be setback from the lot line a distance equal to the front yard setback requirement of the zone in which the salvage yard is located.
 - c) Except as provided for in clause (c) of this subsection, a fence in any yard shall be of consistent height and material and shall be fully screened.
 - d) A fence on a lot used as a salvage yard shall not be constructed using any of the following: shipping containers, sea cans, truck bodies, truck trailers, bus bodies, used building materials unless erected on a stable support system and painted a single neutral colour

PART VII

HEIGHT CALCULATIONS

- 7.1 The height of a fence at any given point shall be measured from the grade at the base of the fence, exclusive of any artificial embankment, provided:
 - a) where changes in grade contours along the fence line result in changes in height of the fence, the height of the fence is deemed to be the average height of the fence over any 2.44 m portion.

GRADE DIFFERENCES BETWEEN LOTS

- 7.2 Where grade elevations of adjacent lots differ, the height of any boundary fence shall be measured from the mean grade elevation between the lots.

SIGHT VISIBILITY TRIANGLES – DRIVEWAYS AND CORNER LOTS

- 7.3 No person shall erect a fence or keep any hedge in any zone greater than 1 m in height at any point:
- a) within a 9.14 m sight visibility triangle, measured along the property line at the intersection of any two streets or at the intersection of two parts of the same street meeting at an angle of not more than 135 degrees;
 - b) within a 4.57 m sight visibility triangle measured at the intersection of any driveway and the property line of any street.

PART VIII

VARIANCES

- 8.1 Any person, being the occupier or owner of land in the Town, may apply to the Chief Building Official for permission to exceed any of the requirements set out in this by-law, and if the Chief Building Official is satisfied that the proposed application is reasonable and does not contravene the purpose and intent of the provisions of this by-law, then the Chief Building Official may grant such permission, in whole or in part, conditionally or unconditionally, as deemed advisable.

PENALTY

- 8.2 Every person who contravenes any of the provisions of this by-law is guilty of an offence and shall, upon conviction thereof, pay a fine as provided for in the *Provincial Offences Act, R.S.O. 1990, c.P.33*, as amended, exclusive of costs.

SEVERABILITY

- 8.3 Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the said section shall not affect the validity of this by-law as a whole or any part thereof, other than the part so declared to be invalid.

MISCELLANEOUS

- 8.4 This by-law shall be deemed to have come into force and take effect on the date of the final passing thereof.
- 8.5 By-law 96.2005 regulating fences and/or swimming pool fences passed under the *Municipal Act, S.O. 2001, c.25*, as amended, by the Town of Kingsville is hereby repealed.

- 8.6 All owners of lots containing a swimming pool must comply with the provisions of this by-law. Swimming pool fences erected prior to this by-law coming into force shall not be considered lawful unless they conform to this by-law. All other legal fences erected prior to this by-law coming into force are deemed to be lawful fences.

**THIS BY-LAW WAS READ A FIRST, SECOND AND THIRD TIME AND
FINALLY PASSED THIS 11TH DAY OF DECEMBER, 2017.**

MAYOR, Nelson Santos

**DEPUTY CLERK-COUNCIL
SERVICES, Sandra Kitchen**