

THE CORPORATION OF THE TOWN OF TILLSONBURG

BY-LAW NUMBER 4007

A BY-LAW to regulate fences in the Town of Tillsonburg.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "***Municipal Act***"), provides that municipal powers shall be exercised by by-law;

AND WHEREAS subsections 11(1), (3) and (4) of the *Municipal Act* authorize the municipal council ("**Council**") of The Corporation of the Town of Tillsonburg (the "**Town**") to provide certain services and things that the Town considers necessary or desirable for the public, including the passage of by-laws respecting fences, signs and other structures;

AND WHEREAS section 98 of the *Municipal Act* provides that a municipal council may exclude the municipality from the application of the *Line Fences Act*, R.S.O. 1990, c. L.17, as amended (the "***Line Fences Act***"), except for section 20 of that *Act*;

AND WHEREAS the Town may enact by-law provisions that (without limitation) create offences, impose fines, authorize orders to achieve compliance or discontinue contraventions, authorize inspections, authorize remedial work and provide for the collection of remediation costs, pursuant to Part XIV of the *Municipal Act*, including sections 425, 429, 435 - 438, 441.1 and 444 - 446;

AND WHEREAS Council deems it desirable and expedient to regulate fences in the Town of Tillsonburg, and to exclude the Town from the provisions of the *Line Fences Act*, with the exception of section 20 of that *Act*;

NOW THEREFORE Council hereby enacts the following:

SECTION 1

SCOPE OF BY-LAW

1.1 SHORT TITLE

This By-law, as amended from time to time, shall be known as the "Fence By-law."

1.2 INTENT AND SCOPE

The purpose of this By-law is to regulate Fences within the Town of Tillsonburg. This By-law does not apply to "swimming pool enclosures", as defined in and governed by the Town's Pool Enclosure By-law, No. 4008.

1.3 CONTENT OF BY-LAW

All references in this By-law to sections, requirements, exceptions, tables, figures, schedules and maps, refer to those in this By-law unless otherwise indicated. Headings given in this By-law are for convenience only, and do not form part of this By-law.

1.4 RELATION TO OTHER GOVERNMENT REQUIREMENTS (COMPLIANCE WITH OTHER REGULATIONS)

This By-law shall not be construed so as to reduce or mitigate restrictions or requirements that are Lawfully imposed by the Town or by any governmental authority. Without limiting the foregoing, compliance with this By-law does not relieve any Person from complying with:

- (a) Legislation or regulations imposed by the Governments of Canada or Ontario, including (without limitation) the Ontario Building Code, O. Reg. 332/12; and

- (b) By-laws enacted by the County of Oxford or other By-laws enacted by the Town;

SECTION 2

DEFINITIONS AND INTERPRETATION

2.1 DEFINITIONS

The terms set out below shall have the following meanings in this By-law:

“Building” means any structure consisting of one or more of a wall, roof or floor, and used or intended to be used for the shelter, accommodation or enclosure of Persons, animals, or goods, but shall not include a lawful boundary wall or Fence.

“Chief Building Official” means the Chief Building Official of the Town.

“Construct” means to do anything in the erection, installation, extension or material alteration or repair of a structure, including (without limitation):

- (a) Anything in the erection, installation, extension or material alteration or repair of a Building or Fence;
- (b) The installation of a structure fabricated or moved from elsewhere, including (without limitation) the structures listed in (a); and
- (c) Work in preparation for any of the acts described above; and “construction” has a corresponding meaning;

“Corner Lot” means a Lot situated at the intersection of two Street Lines with an interior angle of intersection of not more than one hundred and thirty-five (135) degrees, provided that:

- (a) Where the Lot abuts only one Street Line on a curving roadway, it is deemed to abut an intersection of two equal portions of that Street Line; and
- (b) Where either of the intersecting Street Lines is on curving roadway, the line used for calculating the angle of intersection will be the tangent drawn through the Lot’s point of extremity abutting that Street Line; and the corner of such a Lot will be the point at or closest to the Street Line intersection, but this definition shall exclude any portion of a lot further than 30 metres (98.4 feet) from the corner, measured along a Street Line.

“Council” means the Municipal Council of the Corporation of the Town of Tillsonburg.

“Division Fence” means a Fence marking a Lot Line.

“Effective Grade Level” at a given point means the highest level of the ground within 0.5 metres (3 feet 3 inches) horizontally in any direction from that point.

“Fence” means:

- (a) A railing, wall or line composed of posts, wire, gate, boards or pickets or any combination thereof; or
- (b) Any similar structure involving similar materials or components; designed or used to enclose or divide in whole or in part a Yard or other land, to establish a property boundary, or to provide privacy.

“Front Yard” means an area extending across the full width of the Lot between the front Lot Line of the Lot and the nearest part of any excavation, or main Building on the Lot.

“Hedgerow” means one or more hedges, bushes, shrubs, compact evergreen plantings, or any similar organic growth.

“Height” of any Fence means the vertical distance between the top of such Fence and:

- (a) The Effective Grade Level at that point, if the Fence is not located on or above a deck or similar platform; or
- (b) The top surface of any deck or similar platform on which the Fence is located.

“Lawful” means in accordance with the common law, statutes and regulations of Canada and Ontario, the by-laws of the County of Oxford and the by-laws of the Town other than this By-law;

“Lot” means:

- (a) A parcel of land with a boundary defined by an original survey or by a registered plan of subdivision, unless such registered plan of subdivision is designated by a by-law passed pursuant to subsection 50(4) of the *Planning Act*, R.S.O. 1990, c. P.13; or
- (b) A parcel or tract of land with a different registered owner (or registered owners) or from adjacent lands.

“Lot Line” means any boundary of a Lot or the vertical projection thereof.

“Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

“Officer” means an individual appointed by Council or by a designate of Council for the purpose of (or for purposes that include) enforcing one or more municipal by-laws, and includes (without limitation) the Chief Building Official.

“Owner” a registered owner of land, or any Person in control of land including (without limitation) a lessee or an occupant thereof.

“Person” means an individual, firm, corporation, association or partnership.

“Rear Yard” means the area extending across the full width of the Lot between the rear Lot Line and the nearest part of any excavation, or main Building on the Lot.

“Required Front Yard” means the area extending across the full width of the Lot between the front Lot Line and the extent of the required front yard depth as provided by the provisions of the Town of Tillsonburg Zoning By-Law, No. 3295.

“Side Yard” means an area extending between a side Lot Line to the nearest part of any excavation or main Building on the Lot, and between the Front Yard and the Rear Yard.

“Sight Triangle” means the space formed by the intersecting Street Lines of a Corner Lot and a line drawn from a point on one of the said Street Lines to a point on the other said Street Line, provided that:

- (a) The line intersects both street lines at an equal distance from the corner of the Corner Lot; and
- (b) The line is 9 metres (29 feet 6 inches) from the corner of the Corner Lot at its closest point.

“Street Line” means the limit of the roadway allowance and is the dividing line between a Lot and a single street or other roadway.

“Town” means The Corporation of the Town of Tillsonburg.

“Yard” means an area adjacent to a Building, structure or excavation, located on the same Lot as the Building, structure, or excavation, and which area is open, uncovered and unoccupied from the ground to the sky except for Lawful accessory Buildings, structures or uses.

SECTION 3

EXISTING FENCES AND EXCLUSIONS

3.1 Fences – Deemed to Comply

Notwithstanding the provisions of this By-law, any Fence that Lawfully existed prior to the effective date of this By-law shall be deemed to comply with this By-law and may be maintained with the same material, Height and dimensions as previously existed, including (without limitation) any Lawful repair work.

3.2 Required to Maintain

The Owner of any Lot shall maintain each Fence thereon and ensure that it is in safe condition and in good repair.

3.3 Decorative Post Caps

The Height restrictions in this by-law will not include any decorative post caps or similar features that have been pre-approved in writing by the Chief Building Official, following the submission of construction drawings and other materials required by the Chief Building Official.

3.4 Materials- Block, Brick or Stone

A Fence proposed to be Constructed using decorative building block, masonry brick, architectural stone, or any other similar material must be approved in writing by the Chief Building Official or a designate prior to Construction, following the submission of construction drawings and other materials required by the Chief Building Official.

SECTION 4

RESIDENTIAL FENCES

4.1 Height- Fence - Location

No Person shall have, Construct, maintain or permit to be constructed or maintained a Fence on a Lot used for residential purposes except in accordance with all of the following requirements:

- (a) Maximum Height of 2.15 metres (7 feet) at any point in a Rear Yard or Side Yard that does not abut an industrial, commercial or institutional zone;
- (b) Maximum Height of 3 metres (9 feet 10 inches) at any point in a Rear Yard or Side Yard that abuts an industrial, commercial or institutional zone;
- (c) Maximum Height of 1 metre (3 feet 3 inches) at any point in a Required Front Yard; and
- (d) Minimum 1.2 metres (4 feet) horizontal distance from a Side Yard Lot Line, not including a Side Yard Lot Line where a common or party wall is located, at any point where the Fence is located on a deck or elevated platform.

4.2 Height- Fence or Hedgerow- Location

No Person shall have, Construct, maintain or permit to be Constructed or maintained:

- (a) A Hedgerow in a residential Front Yard with a top more than 1 metre (3 feet 3 inches) above the Effective Grade Level; or
- (b) A Fence or Hedgerow that visually obstructs or hinders the use of any existing public or private driveway, lane, alley, roadway or similar access area.

SECTION 5

INDUSTRIAL, INSTITUTIONAL AND COMMERCIAL FENCES

5.1 Height – Specifications

No Person shall have, Construct, maintain or permit to be Constructed or maintained a Fence on a Lot for industrial, institutional, and commercial purposes except in accordance with the following requirement:

- (a) Maximum Height of 3 metres (9 feet 10 inches).

SECTION 6

AGREEMENTS WITH TOWN

6.1 Development – Redevelopment

Notwithstanding any other provision of this By-law, a Fence that is Constructed as required in a registered agreement or agreements entered into with the Town pursuant to Section 41 or 51 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, or any plans approved by the Town in accordance with either of those sections shall be deemed not to contravene the provisions of this By-law.

SECTION 7

BARBED WIRE OR RAZOR WIRE FENCES

7.1 Prohibited - Exceptions

No Person shall have, Construct or maintain or permit a Fence comprised of barbed wire or razor wire, unless such Fence complies with all of the following requirements:

- (a) The fence is on a Lot Lawfully used for commercial or industrial purposes;
- (b) The barbed wire or razor wire projects inwards to the area enclosed by the Fence; and
- (c) The lowest point on the barbed wire or razor wire is at least 2.15 metres (7 feet) above the Effective Grade Level at any point.

- 7.2 This section does not apply to Fences Constructed on lands owned by a government organization or utility provider.

SECTION 8

ELECTRIC FENCES

8.1 Prohibited - Exceptions

No Person shall have, Construct, maintain, or permit any Fence equipped with a device for transmitting an electric current thereon or there through.

- 8.2 This section does not apply to the Lawful use of electrified fencing by agricultural operations for the purpose of controlling the movement of livestock.

SECTION 9

LINE FENCES ACT – DIVISION FENCES

9.1 Line Fences Act- Not Applicable

The *Line Fences Act*, R.S.O. 1990, c. L.17, as amended, with the exception of section 20 of that *Act*, does not apply to any part of the Town of Tillsonburg.

SECTION 10

ADMINISTRATION AND ENFORCEMENT

- 10.1** Subject to sections 435 and 437 of the *Municipal Act*, including the provision of notice to an occupant of land when required, and production of the Officer's identification when requested, an Officer may enter land or a Building at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) This By-law;
 - (b) A direction, authorization, requirement, condition or order made under this By-law; or
 - (c) An order made under section 431 of the *Municipal Act* in respect of a contravention of this By-law.
- 10.2** No Person shall remove an order, notice or direction posted on land or on a structure indicating that it was posted under this By-law, except an Officer.
- 10.3** An Officer may, for the purposes of an inspection under this By-law:
- (a) Require the production for inspection of documents or things relevant to the inspection;
 - (b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) Require information from any Person concerning a matter related to the inspection, including (without limitation) requiring expert or other examinations, testing, reports or as-constructed plans to be obtained and provided; and
 - (d) Alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 10.4** A receipt shall be provided for any document or thing removed under subsection 10.3 and the document or thing shall be promptly returned after copies or extracts are made.
- 10.5** Any sampling done during an inspection shall be done in accordance with subsections (3) and (4) of section 436 of the *Municipal Act*.
- 10.6** An inspection requirement, direction or order made to a Person under this section may be given verbally, but where the Town intends to act upon such matter at the expense of the Person, the requirement, direction or order shall be made in writing and provided to the Person in accordance with the notice provisions of this By-law.
- 10.7** An Officer may undertake an inspection pursuant to an order of a court issued under section 438 of the *Municipal Act*, provided however that in the case of an order authorizing an inspection of a room or place actually being used as a dwelling the occupant is given notice concerning when the inspection will be carried out.

SECTION 11

VARIANCE AND DELEGATION OF AUTHORITY

- 11.1** Any variance from this By-law will require the approval of Council. Such variance application will require a site plan showing the location of the proposed Fence and drawings showing the type and Construction of the Fence. The variance application will be submitted on the form prescribed by the Chief Building Official, and the Chief Building Official shall make a recommendation to Council regarding the disposition of the application. Decisions of Council are final. Council hereby delegates authority to the Chief Building Official with regard to the receipt and disposition of variance applications under this By-law, as Council is of the opinion that the delegated powers are of a minor nature.

SECTION 12

FENCES – CONTRARY TO BY-LAW

12.1 Prohibited - Location

No Person shall have, construct, maintain or permit to be Constructed or maintained any Fence or Hedgerow in a Side Yard immediately adjoining a public roadway unless such Fence or Hedgerow is located at least 3.5 metres (11.5 feet) from the nearest edge of the existing public roadway pavement.

12.2 Prohibited- Sight Triangle

No Person shall have, construct, maintain or permit to be Constructed or maintained any Fence or Hedgerow in a Sight Triangle.

12.3 Restriction of Materials – Residential Zone

In a residential zone, no Person shall have, construct, maintain or permit to be Constructed or maintained any Fence comprised of sheet metal, sheet plastic, fiberglass, untreated wood, single strand wire, plywood or pressboard, corrugated fiberglass, corrugated plastic, corrugated metal and without limiting the generality, any other material not typically used in the Construction of a Fence on a Lot used for residential purposes.

12.4 Restriction of Materials – Division Fence

No Person shall have, construct, maintain or permit to be Constructed or maintained any Division Fence comprised of any gauge of bird netting, single strand wire or mesh.

12.5 Contravention of an Order

No Person shall contravene an order made pursuant to this By-law.

12.6 Obstruction

No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person who is exercising a power or performing a duty under this By-law, including (without limitation) carrying out an inspection.

SECTION 13

ORDER TO DISCONTINUE ACTIVITY

- 13.1** Without limiting the orders that an Officer may make pursuant to this By-Law, if an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the Person who contravened the By-law or who caused or permitted the contravention or who is the Owner of the land on which the contravention occurred to discontinue the contravening activity.

13.2 An order under this section shall set out:

- (a) Reasonable particulars adequate to identify the contravention to be discontinued and the location of the land on which the contravention occurred; and
- (b) The deadline for compliance.

13.3 An order under this section shall be delivered in accordance with the notice provisions of this By-law.

SECTION 14

WORK ORDER

14.1 Without limiting the orders that an Officer may make pursuant to this By-Law, if an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the Person who contravened the By-law or who caused or permitted the contravention or who is the Owner of the land on which the contravention occurred to do work to correct the contravention.

14.2 An order under this section shall set out:

- (a) Reasonable particulars adequate to identify the contravention to be discontinued and the location of the land on which the contravention occurred;
- (b) The deadline for compliance; and
- (c) The work to be done, which may include obtaining all permits and inspections required by law.

14.3 An order under this section shall be delivered in accordance with the notice provisions of this By-law.

SECTION 15

FAILURE TO COMPLY AND COST RECOVERY

15.1 Where a Person defaults in complying with a direction, requirement or order under this By-law to do a matter or thing, an Officer or agent on behalf of the Town may, with such assistance from others as may be required, enter the land on which the contravention occurred at any reasonable time, and carry out such direction, requirement or order at the Person's expense.

15.2 In accordance with section 446 of the *Municipal Act*, the Town may recover the costs from the Person directed, required or ordered to do a matter or thing under this By-law, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes, and such costs shall include interest at an annual rate of 15 per cent.

15.3 For the purposes of subsection 15.2, interest shall be calculated for the period commencing the day the Town incurs the costs and ending on the day the costs including the interest are paid in full.

15.4 The amount of the Town's costs incurred plus interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

SECTION 16

OFFENCES, PENALTY AND FINE RECOVERY

- 16.1** Subject to subsection 16.2, any Person who contravenes a provision of this By-law, and an officer or director of a corporation in the event of a contravention by a corporation, is guilty of an offence and upon conviction is liable to a fine or penalty as follows:
- (a) For a first offence, a minimum of \$100.00 and a maximum of \$5,000.00;
 - (b) For a second offence, a maximum of \$15,000.00; and
 - (c) For a third or subsequent offence, a maximum of \$30,000.00.
- 16.2** Any Person who contravenes any order made under this By-law, or an officer or director of a corporation in the event of a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$2,500.00 for each day or part of a day that the offence continues, and despite subsection 16.1 the total of all the daily fines imposed for an offence is not limited by the maximums listed in subsection 16.1.
- 16.3** If this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an *order*,
- (a) Prohibiting the continuation or repetition of the offence by the Person convicted; and
 - (b) Requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 16.4** Pursuant to section 441 of the *Municipal Act*, if any part of a fine for a contravention of this by-law remains unpaid after the fine becomes due and payable under section 66 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, including any extension of time for payment ordered under that section, the Town may give the Person against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which shall be not less than twenty one (21) days after the date of the notice.
- 16.5** If the fine remains unpaid after the final date specified in the notice, the fine shall be deemed to be unpaid taxes for the purposes of section 351 of the *Municipal Act*.
- 16.6** In accordance with section 441.1 of the *Municipal Act*, any part of a fine owing pursuant to this by-law or a related provincial offence may be added to the tax roll for any property in the Town of Tillsonburg for which all of the Owners are responsible for paying the fine, and collect such fine in the same manner as municipal taxes.

SECTION 17

NOTICE

- 17.1** Any notice pursuant to this By-law may be given in writing in any of the following ways and is effective:
- (a) On the date on which a copy is delivered to the Person to whom it is addressed;
 - (b) On the fifth day after a copy is sent by registered mail to the Person's last known address;
 - (c) Upon the conclusion of the transmission of a copy by facsimile to the Person's last known facsimile number; or
 - (d) Upon the sending of a copy by email transmission to the Person's last known email address.

- 17.2 Without limiting subsection 17.1, any notice to an Owner pursuant to this By-law is effective on the fifth day after a copy is sent by registered mail to the address for that Owner on the municipal assessment roll.

SECTION 18

SEVERABILITY

- 18.1 In the event any section or sections of this By-law or parts of it are found by a Court to be illegal or exceed the power of the Council to enact, such section, or sections, or parts thereof shall be deemed to be severable and all other sections, or parts of this By-law shall be deemed to be separate and independent and shall continue in full force.

SECTION 19

REPEAL AND TRANSITION

- 19.1 The Town's By-Law No. 3058 is hereby repealed in its entirety.
- 19.2 Notwithstanding subsection 19.1, the provisions of By-Law No. 3058 will be deemed to continue in force and effect with respect to any and all orders, appeals or prosecutions issued, filed or commenced under that by-law, and any assessment, rate, charge, tax, fee, liability or penalty outstanding under that by-law may be collected as if that by-law had not been repealed.

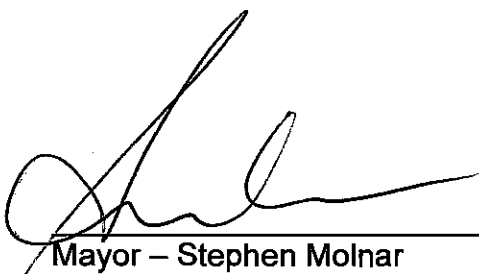
SECTION 20

EFFECTIVE DATE

- 20.1 This By-Law shall take effect on the date of its final passage by Council.

READ A FIST AND SECOND TIME THIS 11TH DAY OF APRIL, 2016

READ A THIRD AND FINAL TIME AND PASSED THIS 25TH DAY OF APRIL, 2016



Mayor – Stephen Molnar



Town Clerk – Donna Wilson