



Town of Whitby

By-law # Draft XXXX-24

Fence By-law

Being a By-law to prescribe the height and description of lawful fences in the Town of Whitby and to require the owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools

Whereas the Municipal Act, 2001, S.O. 2001, c.25, as amended, allows a municipality to pass by-laws with regard to structures, including fences and signs.

And Whereas the Ontario Heritage Act, R.S.O. 1990. c.O. 18 authorizes Council to pass a By-law prescribing minimum standards for the maintenance of heritage attributes of designated property or properties situated in a heritage conservation district

Now therefore, the Council of The Corporation of the Town of Whitby hereby enacts as follows:

1. Definitions

In this By-law:

- 1.1. "Council" means the Council for The Corporation of the Town of Whitby.
- 1.2. "CLOCA" means The Central Lakes Ontario Conservation Authority.
- 1.3. "Commissioner" means the Commissioner of Legal and Enforcement Services/Town Solicitor, or such delegate as they may appoint from time to time.
- 1.4. "Corner lot" means a lot situated at the intersection of and abutting upon two or more streets or two portions of the same street, provided that the angle of intersection of such streets, or the bend in such street, is not more than 135 degrees.
- 1.5. "Division fence" means a fence marking the boundary between adjoining parcels of land.
- 1.6. "Electrical fence" means a fence through which electricity passes.
- 1.7. "Enclosed" means when the property is enclosed in a way that can be relied on to prevent entry of the general public.
- 1.8. "Erect" means alter, construct, place, locate, install or relocate.
- 1.9. "Expense" means the cost of carrying out the work to be done, together with an administrative fee as outlined in the Town of Whitby Fees By-law.
- 1.10. "Fence" means and includes but is not limited to a guard, line of posts, wire, gate, boards or other similar items, used to enclose or divide in whole or in part a yard or other land or to establish a property boundary, but does not include a privacy screen.

- 1.11. "Fence height" means the vertical distance between the finished grade of the ground and the top of the fence, 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.
- 1.12. "Front lot line" means the lot line that divides the lot from the street, provided that, in the case of a corner lot, the shorter lot line that abuts a street shall be deemed to be the front lot line; On a through lot, the lot line abutting the wider street right of way shall be deemed the front lot line.
- 1.13. "Hazardous condition" means a condition that is subject to the provisions of this by-law which exists on a property and is identified by an officer as posing an immediate threat to the safety or health of persons or animals and includes, but is not limited to, conditions identified by an officer as negatively impacting neighbouring properties
- 1.14. "Heritage attributes" means the attributes of a property and the buildings and structures on the property that contribute to the cultural heritage value and the elements, features or building components that support or protect the heritage attributes that are described in,
- (i) a by-law designating a property passed under the Ontario Heritage Act, that identifies the heritage attributes, values and reasons for designation; or
 - (ii) a Minister's Order made under the Ontario Heritage Act, that identifies the heritage attributes, values and reasons for designation; or
 - (iii) a by-law designating a heritage conservation district passed pursuant to the Ontario Heritage Act, that identifies the heritage attributes, values and reasons for designation.
 - (iv) A property subject to a Heritage Easement Agreement that outlines the protected heritage attributes
- 1.15. "Heritage permit" means an authorization or permit issued by the Municipality as per Section 33(1) or 42(1) of the Ontario Heritage Act that provides permission to alter or demolish a designated heritage property.
- 1.16. "Highway" means a common and public highway, whether assumed or unassumed, and includes a bridge, trestle, viaduct, or other structure forming part of the highway which is under the jurisdiction of the Town or the Regional Municipality of Durham Region.
- 1.17. "Grade" means the surface of the ground below a fence at each location where a structural support is imbedded in the ground.
- 1.18. "Industrial zone" means an industrial or employment zoned property as per the Town of Whitby zoning by-laws.
- 1.19. "Invisible safety nets" means a black, dark green, or white net made of knotted monofilament nylon mesh or other similar materials, with a 90% or greater porosity, with a spacing between the mesh not to exceed 20mm and a minimum thickness

of 1.7mm, primarily used to absorb the impact of a golf ball. The netting shall be constructed in a way to have minimal intrusive visual impact.

- 1.20. "Non-climbable" means a 1.2 m vertical face presented to the exterior of a swimming pool enclosure. For an enclosure of chain link construction, means a mesh which is no greater than 38mm square for a minimum of 1.2m vertically. For all other enclosures, means that there is no horizontal opening or step greater than 38mm in width for 1.2m vertically, or where horizontal components are a minimum of 1.2m apart there shall be no opening greater than 100mm.
- 1.21. "Lot" means a parcel or contiguous parcels of land in one ownership which is capable of being legally conveyed in accordance with the Planning Act as amended or replaced or is described in accordance with a registered Plan of Condominium and includes a Parcel of Tied Land (POTL).
- 1.22. "Municipal Licensing and Standards Committee" means the committee that Council has delegated its powers and authorities to for the purposes of the by-law
- 1.23. "Municipal Law Enforcement Officer" means a Municipal Law Enforcement Officer appointed by the Town of Whitby.
- 1.24. "Ontario Heritage Act" means the Ontario Heritage Act, R.S.O 1990, Chapter 0.18.
- 1.25. "Ornamental pond" means, but is not limited to, any body of water in or above the ground located outdoors on privately-owned property, contained in part or in whole by artificial means, in which the depth of the water at any point can exceed 0.6m, and is used as a decorative feature in a yard, and kept for its' esthetic value rather than a useful purpose;
- 1.26. "Owner" means the person or persons registered as the owner of a subject property in the most recent municipal tax records and/or in accordance with the records of the land registry office.
- 1.27. "Part IV heritage property" means property, including all buildings and structures thereon, which has been designated by the Town of Whitby under section 29 of the Ontario Heritage Act, or which has been designated by the Minister under section 34.5 of the Ontario Heritage Act.
- 1.28. "Part V heritage property " means property, including all buildings and structures thereon, located within a heritage conservation district, which has been designated by the Town of Whitby under section 41 of the Ontario Heritage Act.
- 1.29. "Penalty Notice" means an administrative penalty issued for an alleged contravention of a provision of this by-law, and which meets the requirements as set out in Section 3 of the Administrative Penalty By-Law # 8056-24.

- 1.30. "Person" means a natural individual, and their heirs, executors, administrators or other legal representatives, a corporation, partnership or other form of business association or a receiver or mortgagee in possession.
- 1.31. "Planning Act" means the Ontario Planning Act, R.S.O.1990. c.P13, as amended.
- 1.32. "Privacy screen" means a visual barrier used to shield any part of a yard from view from any adjacent parcel of land or any highway.
- 1.33. "Sight triangle" means a "sight triangle" or a "visibility triangle" as defined in the Town's Zoning by-laws.
- 1.34. "Rear lot line" means the farthest lot line opposite the front lot line, or in the case of a triangular lot, shall be that point formed by the intersection of the side lot lines.
- 1.35. "Side lot line" means a lot line other than a front or rear lot line.
- 1.36. "Street line" means the dividing line between a lot and a street.
- 1.37. "Swimming pool" means any body of water in or above the ground contained by artificial means, in which the depth of the water at any point can exceed 0.6m and is used or is capable of being used for swimming, wading or bathing and shall include an ornamental pond if it is capable of containing a water depth of 0.6m, but does not include, hot tubs, whirlpools or spas.
- 1.38. "Swimming pool enclosure" means a fence, wall or other structure including doors and gates, surrounding a privately-owned outdoor swimming pool.
- 1.39. "Swimming pool enclosure permit" means a permit issued under this By-law.
- 1.40. "Town" means The Corporation of the Town of Whitby.
- 1.41. "Yard" means an open, uncovered space on a lot appurtenant to a building,
- (i) "Front yard" means a yard extending across the full width of a lot between the front lot line and front walls of the nearest building or structure on the lot.
 - (ii) "Exterior side yard" means the yard of a corner lot that extends from the front yard to the rear yard between the exterior side lot line and the nearest part of any main building on the lot.
 - (iii) "Interior side yard" means a side yard other than an exterior side yard, that extends from the front yard to the rear yard between the interior side lot line and the nearest part of any main building on the lot.
 - (iv) "Rear yard" means a yard extending across the full width of a lot between the rear lot line and the nearest wall or walls of any main building on the lot for which the yard is required.

- (v) "Side yard" means a yard extending from the front yard to the rear yard between the side lot line and the nearest wall of any building or structure on the lot for which the yard is required;

2. Heritage Properties

No person shall erect, alter, or remove, and no owner shall permit the erection, alteration, or removal of a fence wholly or partially on a Part IV heritage property or a Part V heritage property unless a heritage permit has been issued and all work is completed in accordance with the specifications of the heritage permit, or unless the Town has waived the requirement for a heritage permit in writing. For the purposes of this section a fence partially on a Part IV heritage property or a Part V heritage property includes a division fence located on the boundary between a Part IV heritage property or a Part V heritage property and a property without a Part IV heritage property or Part V heritage property designation.

3. Swimming Pool Enclosure Permits

- 3.1 No person shall excavate for or erect, or cause to be excavated for or erected, a privately owned outdoor swimming pool, or ornamental pond without first obtaining a swimming pool enclosure permit in connection therewith from the Town.
- 3.2 Every application for a swimming pool enclosure permit shall be made in the approved form.
- 3.3 Every application for a swimming pool enclosure permit shall be accompanied by:
 - (a) A detailed accurate site plan that illustrates the location of and the setback measurements of the fencing, easements, pool and all buildings.
 - (b) If the property is not assumed by the Town, an approval letter from the builder, as well as proof that deposits were collected from the developer, must be provided.
 - (c) Confirmation from the Towns planning department that the property's zoning category allows for the installation of a pool.
 - (d) Any relevant documents required by the Officer / Town staff; and
 - (e) Pool Enclosure Permit Fees in the amount described in Schedule "D" in the Town of Whitby Fees and Charges By-law # 7220-17, as amended.
- 3.4 Any lot within the CLOCA screening area must obtain CLOCA approval for installation of the pool. Approval shall be included with application submission.
- 3.5 A swimming pool enclosure permit shall not be issued by the Town, unless the swimming pool enclosure application complies with all relevant provisions of this By-law and all other relevant regulations.
- 3.6 The Town may impose any conditions it deems appropriate for the permit.

- 3.7 A pool enclosure permit shall be valid for 1 year after issuance.
- 3.8 In the event physical construction of the pool or ornamental pond has not started within the 1-year timeframe, the pool permit application fee shall be forfeited, and a new pool permit application with accompanied fees shall be required.
- (a) Visual indications that pool / pond construction has been initiated shall be present.
Such as evidence of excavation of the area.
- (b) Any such other indications found satisfactory by the Officer.
- 3.9 The Senior Manager of Enforcement Services shall have the authority to make exceptions to section 3.8.

4. Swimming Pool Enclosures

- 4.1 Every owner of a privately-owned outdoor swimming pool or ornamental pond shall erect, and maintain, or cause to be erected and maintained, a swimming pool enclosure completely around the privately-owned outdoor swimming pool or ornamental pond.
- 4.2 The enclosure shall extend to a height, measured from the outside of the enclosure, of not less than 1.2 metres.
- (a) Have every support post securely imbedded in the ground and be structurally adequate for the intended use.
- 4.3 The enclosure shall be constructed of;
- (a) Chain-link not greater than 38 millimeter diamond mesh, and galvanized steel wire not less than 12 gauge;
- (i) galvanized steel supporting posts spaced at no more than 3 meter intervals
- (ii) end posts and corner posts at least 48 millimeters in diameter
- (iii) intermediate posts at least 38 millimeters in diameter; and
- (iv) top and bottom rails made of galvanized steel pipe having a minimum diameter of 32 mm, however a 5 mm galvanized steel tension rod may be substituted for the bottom rail; or
- (b) Vertical wood or composite board on board spaced not more than 38mm apart where horizontal rails are spaced less than 1.2m apart; or

- (i) Spaced not more than 100 millimeters apart where horizontal rails are spaced 1.2 meters apart or more and;
 - (ii) Attached to horizontal rails that are supported on substantial posts that are at least 89 millimeters by 89 millimetres, spaced not more than 2.4 meters apart, securely fastened to the ground and structurally sound.
- (c) Horizontal wood or composite boards shall be:
 - (i) at least 19 millimetres by 89 millimeters lumber;
 - (ii) Spaced not more than 20 millimeters apart;
 - (iii) Offset or protruding not more 15 millimeters from the board immediately above or below; and
 - (iv) not more than 2.4 meters in length.
- (d) Wrought iron fencing with at least 1.2 meters between horizontal members and with no greater than 100 millimeters of spacing between vertical bars;
 - (i) Horizontal rails shall be supported on substantial posts that are spaced not more than 2.4 metres apart, securely fastened to the ground and structurally sound.
- (e) Any glass panel fence that is used in or as part of a Swimming Pool Enclosure shall be constructed as follows:
 - (i) glass panels shall be located so there is no opening of more than 38 millimetres between the panel and the post where horizontal elements are spaced less than 1.2 metres apart, and not more than 100 millimetres apart where horizontal elements are spaced more than 1.2 metres apart.
 - (ii) horizontal elements shall be supported on posts that are spaced not more than 2.4 metres apart, securely fastened to the ground and structurally sound; and
 - (iii) glass panels used in Swimming Pool Enclosures shall be:
 - (a) safety glass of the laminated or tempered type conforming to CAN/CGSB-12.1-M "Tempered or Laminated Safety Glass"; or

(b) wired glass conforming to CAN/CGSB-12.1-M "Wired Safety Glass".1

(f) All pool fence enclosures shall be constructed in a professional manner.

(g) Any combination thereof as provided in this By-law or such other material design or construction as will provide an equivalent or greater degree of safety and which is approved in writing by the Senior Manager of Enforcement Services

- 4.4 May incorporate all or a portion of the wall of a building, but no entrances to the pool area shall be permitted through such wall unless the entrance is set back a minimum distance of 1 meter from the water's edge of the swimming pool.
- 4.5 No Swimming Pool Enclosure shall have any unprotected openings larger than 100 millimetres.
- 4.6 No person shall place water in or cause water to be placed in a privately-owned outdoor swimming pool or ornamental pond, or allow water to remain therein, until such time as the swimming pool enclosure as prescribed by this By-law has been erected completely around the swimming pool or ornamental pond and the enclosure has been signed off by an Officer.
- 4.7 Pool enclosure design shall be non-climbable from outside of the enclosure.
- 4.8 Despite the provisions of Subsection 4.6 of this by-law, whereby 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 a swimming pool enclosure prescribed herein, shall erect and maintain, or cause to be erected and maintained, a temporary fence in accordance with section 7.1.
- 4.9 The means of entry within the Swimming Pool Enclosure shall be kept secured when the pool is not in use.
- 4.10 The use of private property pools is at the risk of the property owner, not the Town.
- 4.11 The Commissioner shall have the authority to apply any conditions they deem appropriate to a swimming pool enclosure permit.

5. Above Ground Pool Enclosures

- 5.1 For an above-ground swimming pool, the exterior side of the above-ground swimming pool structure and any rail or Guard attached thereto may constitute a swimming pool Enclosure and the provisions of this by-law shall apply to such sides of the Swimming Pool.
- 5.2 Notwithstanding any other provisions of this by-law, the combined height of the exterior sides of the Swimming pool structure and any rail or guard attached thereto shall be a minimum of 1.2m and may be a maximum of 2.6 m in height above the adjacent grade; and
- 5.3 The outside of the swimming pool structure and any guard shall not be climbable.
- 5.4 Where the means of entry to the Swimming Pool is with a ladder, such ladder shall be removable from the vicinity of the pool or be designed to be lifted and locked or be designed to have a lockable cover when the pool is not in use.
- 5.5 The pool, platform and/or deck shall be setback from the lot lines in accordance with the Town's Zoning By-law
 - (i) and if required a building permit shall be obtained.

6. Swimming Pool Enclosure Gates

- 6.1 May incorporate one or more gates of equivalent material and construction as the swimming pool enclosure, and every such gate shall not be less than 1.2 m in height, measured from the outside of the gate, be supported on substantial hinges, be self-closing and equipped with self-latching devices placed on the inside of the gate and contain a locking mechanism.
 - (a) Such gates shall be closed and locked by a padlock or equivalent lock at all times when the pool is not in use.
 - (b) Any gate opening/closing mechanism located on the exterior of the pool enclosure shall be located a minimum of 1.2meters above grade and shall not contain any element that can cause the gate to open within the 1.2meters. Such as a pull cord or latch.
 - (c) Have no element or attachment between 100 mm and 1.2 meters above grade that may facilitate climbing the outside of the enclosure;
 - (d) Shall be constructed in such a manner that a space of not more than 100 mm shall be permitted at any point between the bottom of the gate? and the ground.

- (e) Shall not contain any openings greater than 100mm.

6.2 Double swing gates shall;

- (a) Have one gate that is self-closing and equipped with a lockable, self-latching device located on the of the gate.
- (b) Have one gate that is equipped with a lockable drop bolt that extends down securely into concrete, asphalt, or paving stones.
 - (i) Lockable drop bolt shall be kept in the down position and secured at all times, except when the enclosed area is in use.
- (c) Both gates shall comply with section 6.1

7. Temporary Pool Enclosure

- 7.1 Where by reason of the nature of construction of a privately-owned swimming pool it is necessary to fill the swimming pool with water during construction, the owner in lieu of the prescribed enclosure, shall erect and maintain, or cause to be erected and maintained a temporary fence completely around the swimming pool until construction is complete, and upon completion of such construction the owner shall immediately replace or cause to be replaced the temporary fence with a swimming pool enclosure prescribed in this by-law. A temporary Swimming Pool Enclosure shall:
- (a) consist of plastic mesh not greater than 38mm.
 - (b) not be less than 1.2m in height.
 - (c) be supported by steel T-bar posts spaced at no more than 3m intervals.
 - (d) have 9 gauge galvanized steel wire secured along the top and bottom of the fence.
 - (e) Not have any members or attachments that would facilitate climbing on the exterior face of the enclosure
- 7.2 Temporary fencing shall be erected in a professional manner
- 7.3 Notwithstanding section 7.1(a) Temporary Pool Enclosure may be constructed in a manner that in the opinion of the Senior Manger of Enforcement Services will provide a satisfactory degree of safety, provided such is approved by the Senior Manager of Enforcement Services in writing prior to its construction.

8. Hot tubs, Whirlpools, and Spas

- 8.1 The fencing provisions of this by-law relating to privately-owned outdoor swimming pools shall not apply to a privately-owned outdoor hot tub, whirlpool or spa provided the owner of the hot tub, whirlpool or spa, has equipped the hot tub, whirlpool or spa with a secure, locking cover.
- 8.2 Every owner of a privately-owned outdoor hot tub, whirlpool or spa shall have the outdoor hot tub, whirlpool or spa covered and locked at all times when not in use.

9. Fences on Residential Property

- 9.1 No person shall erect or cause to be erected in a side yard or rear yard on any residential property a fence which is higher than 2 meters above grade.
- 9.2 Any fence post or decorative fence post feature may project a maximum of 200mm above the maximum fence height.
- (a) 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 500mm above the maximum fence gate height.
 - (b) The decorative feature may not be solid and shall contain openings to allow for the passage of light.
- 9.3 No person shall erect or cause to be erected a fence that uses or wholly or partially consists of materials not usually intended for use in permanent fencing, including, without limitation, adhesive tape, cloth, textile, cardboard, plywood, corrugated metal, metal sheets, and paper, unless specifically permitted by this bylaw or another by-law.
- 9.4 No person shall erect or cause to be erected in a front yard on any residential property a fence which is higher than 1 meter above grade.
- (a) Any fence within 2.4 m of any driveway shall be of open construction for at least 2.4m from the lot line at which the driveway begins so as not to obstruct the view of the boulevard, sidewalk or highway
 - (b) No vegetation shall be permitted to grow or object permitted to be placed in such a way as to obstruct the view through a fence under subsection “a”
- 9.5 Section 9 shall not apply where the fence is;
- (a) Erected and used to enclose or delineate an area required for and lawfully used as a tennis court, provided the fence is of chain link construction.
 - (b) A noise control barrier erected by or as a requirement of a government agency acting pursuant to statutory authority.
 - (c) Located on land abutting land used for industrial or commercial purposes, railway right of way or utility installations when the abutting owner is responsible for the construction and/or maintenance of the fence; or

- (d) an invisible safety net, as approved in writing by the Town to determine structural stability, solely located on the owner's property, on any property abutting or located within 25m of a golf course, constructed for the purposes of the personal protection of persons and/or property.
- 9.6 Where a rear yard of a lot is adjacent to the front yard of another lot, Section 9.1 shall apply
- 9.7 Where the front yard depths of two abutting residentially zoned properties vary, the front yard shall be determined by the abutting property with the lesser front yard depth, for the purpose of establishing the maximum permitted fence height in accordance with sections 9.4.
- 9.8 In the case of a corner lot where the larger usable yard is located in the interior side yard rather than the rear yard, as defined herein, a fence on that portion of the front yard adjacent to the interior side yard may be 2 metres above grade in height.
- 9.9 In circumstances where a property abuts an arterial road as defined in either the Town of Whitby or Region of Durham Official Plan, the maximum fence height shall be 2.5m for the portion of the fence that abuts the arterial road.
- 9.10 Snow fencing may be used on private property between November 15 to April 15th and shall be of plastic mesh and installed and maintained in a good and acceptable quality.
- 9.11 No residential fence shall contain a gate which grants access onto Town of Whitby property, unless a permit has been granted.
- 9.12 No person shall construct a fence that creates an unsafe condition.
- 9.13 Notwithstanding other provisions of this By-law, any other fencing that is approved in writing by the Senior Manager of Enforcement Services may be permitted.

10. Privacy Screens

- 10.1 No person shall erect, or cause to be erected, a privacy screen in a front yard.
- 10.2 No person shall erect, or cause to be erected, a privacy screen in a side or rear yard except in accordance with the following provisions:
 - (a) the privacy screen is located at least 1 meter from any side or rear lot line;
 - (b) the privacy screen is no more than 2.63m in height above grade; and
 - (c) the collective total of all the privacy screens within the property is no more than 6m in length and

- 10.3 No person shall erect, have, permit or maintain on any residential property a privacy screen which is not in a good state of repair or has an inferior appearance or quality on the side of the privacy screening which faces the adjoining property.
- 10.4 Privacy Screens shall be constructed of structurally sound material and erected in a professional manner.
- 10.5 Where a privacy screen is constructed on a raised deck, the maximum combined height of the deck and the privacy screen shall be no more than 3.5m.
- 10.6 No person shall construct a privacy screen that creates an unsafe condition.

11. Fences on non residential properties

- 11.1 No person shall erect, have, permit, or maintain on any non-residential property a fence greater than 2 meters in height except for industrial properties where the maximum fence height shall be 3 meters.
- 11.2 The use of barbed wire on non-residential property shall be limited to property primarily used for industrial purposes and shall be limited to a maximum of three strands above a chain link fence, provided that such barbed wire does not project over any adjacent property.
- 11.3 The use of any device for projecting an electrical current through a fence in a non-residential property is prohibited.
- 11.4 For the purpose of determining fence height where a residential property abuts a non-residential property, the less restrictive provision shall apply to the common lot line.
- 11.5 No person shall erect, have, permit or maintain on any non-residential property a fence located a distance closer than 3 metres to an intersection. For purposes of this subsection, intersection shall mean the point of intersection of two or more property lines that abut a street.
- 11.6 No person shall construct a fence that creates an unsafe condition.

12. Fences on Rural Properties

- 12.1 No person shall erect, have, permit or maintain a fence greater than 2 meters in height on land primarily used for farming purposes.
- 12.2 The use of barbed wire and electrical fencing shall be permitted for farming purposes.
- 12.3 No person shall erect, have, permit or maintain on any land primarily used for farm purposes a fence located a distance closer than 3 meters to an intersection. For

purposes of this subsection, intersection shall mean the point of intersection of two or more property lines that abut a street.

12.4 No person shall construct a fence that creates an unsafe condition.

13. Visibility and Sight Triangles

13.1 No person shall erect or cause to be erected any fence within a visibility triangle or sight triangle, or in any location which obstructs the vision of motorists or pedestrians either when leaving a highway or entering a highway from another highway or driveway or of any traffic sign or control device or which for any other reason constitutes a hazard.

14. Highways and Other Public Lands

14.1 A fence separating land owned by the Town, except for any land that constitutes a public highway, including land abutting a public highway that is held as a reserve by the Town or other public authority to separate land from the highway, or to land that is being held by the Town or other public authority as an unopened road allowance or for future public highway purposes, shall be constructed in accordance with the specifications contained in the Town of Whitby Engineering Design Criteria and Standard Drawings Manual. (Schedule "B").

14.2 No person shall erect or maintain, or permit to be erected or maintained, a fence wholly on any lands under the ownership of the Town, including a highway.

14.3 A fence erected as a noise control or attenuation barrier shall be maintained by the owner of the land on which the fence is erected and shall be of the same construction, provided the material is available. In the event the material is no longer available an equivalent material will be utilized. If the barrier abuts land owned by or under the control of the Town, the Town shall not be required to maintain the barrier or incur any costs with respect to the maintenance of the barrier.

15. Maintenance

15.1 The owner of the land on which a fence, swimming pool enclosure, privacy screen or invisible safety net is erected shall maintain such fence, swimming pool enclosure, privacy screen or invisible safety net in a good state of repair.

15.2 For the purposes of this By-law "good state of repair" shall mean;

(a) The fence, swimming pool enclosure, privacy screen, or invisible safety net is complete and in a structurally sound condition, plumb and securely anchored.

- (b) The fence, swimming pool enclosure, privacy screen, or invisible safety net and its components are protected by weather-resistant materials.
- (c) Fence, swimming pool enclosure, privacy screen, or invisible safety net components are not broken, rusted, rotten or in a hazardous condition.
- (d) All stained or painted fences, swimming pool enclosures, privacy screens, or invisible safety net are maintained free of peeling paint or stain; and
- (e) That the fence, swimming pool enclosure, privacy screen, or invisible safety net does not present an unsightly appearance, deleterious to abutting land or to the neighbourhood.

15.3 Whenever a fence, including a noise barrier, has been required or regulated by the Town or other public authority, through a plan of subdivision, plan of condominium or site plan agreement, as a condition of development or redevelopment, such features shall be maintained, without alteration, in a good state of repair, by the owner, so as to ensure continuous compliance with the Town's or other public authority's requirements.

15.4 No person shall construct or caused to be constructed a fence, swimming pool enclosure, privacy screen or invisible safety net that creates an unsafe condition.

16. Hazardous Fences

16.1 No person shall erect or cause to be erected a fence containing barbed wire or razor wire or any other hazardous materials, on any lands.

16.2 No person shall erect or cause to be erected an electrical fence, except a fence used for the containment of animals in connection with a farming operation

17. Hazardous Conditions

17.1 Notwithstanding Section 17 of this by-law, an officer who finds a hazardous condition may enter onto any property to remove or control such hazardous condition or to limit the negative impact on neighbouring properties without the requirement of first sending a work order, but a work order shall be sent as soon as practical after the removal or control of the hazardous condition or after limiting the negative impact on neighbouring properties.

17.2 The Town may recover the costs of doing any work undertaken pursuant to this by-law, together with an administration charge equal to 25 percent of the total costs, from the owner or occupant by legal action or by adding the costs and administration charge to the tax roll and collecting them in the same manner as property taxes.

17.3 An order issued after the hazardous condition is remedied shall set out: (1) that the hazardous condition has been remedied; (b) the manner in which the hazardous condition was remedied; (c) any other contraventions of the by-law; and (d) any costs payable and shall otherwise comply with the provisions of Sections 17.

18. Delegation of Authority for Fence By-law Exemptions

Minor Fence Height Exemptions

18.1 The Commissioner is delegated the authority to approve exemptions from the 2-metre fence height maximum noted Sections 9.1, 9.4, and 11.1 of this By-law subject to the following:

- (i) The height exemption being sought is no more than a maximum 10% variance;
- (ii) The applicant provides the required information, as determined by the Commissioner, with their application and payment of the application fee as set out in the Town's Fees and Charges By-law;
- (iii) The Commissioner circulates notice of the application for an exemption to adjacent property owners directly affected by the application to determine if there are objections to the application;
- (iv) Upon receipt of an objection, the Commissioner shall review the objection, and if reasonable grounds for the objection are provided, the exemption request will be denied;
- (v) In instances where a fence that is subject to an application for an exemption abuts or may otherwise potentially impact Town property, the Commissioner shall circulate the application for an exemption to relevant Town departments for review and comment;
- (vi) Fences that are approved for exemptions to the height maximums of the Fence By-law remain subject to the provisions of the Division Fence By-law# 3657-95, as amended, and the Line Fences Act, R.S.O. 1990, c. L.17, as amended;
- (vii) The Commissioner may impose any conditions which may be reasonable to the granting of a fence height exemption under this Section 18.1; and,
- (viii) The Commissioner may provide for any matter that, in the Commissioner's opinion, is necessary for the assessment and determination of fence height exemption requests in accordance with this By-law.

18.2 The decisions of the Commissioner under this By-law shall be considered final and binding, and not subject to appeal or review to Town Council, a Court or other Tribunal.

18.3 The Commissioner, in their sole discretion, may refer a request under Section 18.1 to the Municipal Licensing and Standards Committee for its review and approval.

Additional Fence Height Exemptions

18.4 Any property owner may make an application to the Municipal Licensing and Standards Committee for an exemption from provisions contained in this By-law, in accordance with the following:

- (a) Completed application shall be submitted by the owner of the land on the prescribed form.

18.5 The application shall contain:

- (a) the name and address of the applicant, including the legal description of the property
- (b) a description of the fence including type of materials to be used for construction.
- (c) written permission/authority to act on behalf of the adjoining owner if the matter involves a divisional fence.
- (d) the reasons why the exemption is being sought; and
- (e) an application fee as set out in the Town's Fees and Charges By-law.

18.6 The Municipal Licensing and Standards Committee may consider, and grant or refuse to grant, an exemption request between 2.2-metres to a maximum of 3.0 metres (3.5 metres for an industrial property) and may impose conditions as may be appropriate.

18.7 The Municipal Licensing and Standards Committee may grant or refuse to grant any exemption request and may impose conditions as may be appropriate.

18.8 The decisions of the Municipal Licensing and Standards Committee under this By-law shall be considered final and binding, and not subject to appeal or review to Council, a Court or other Tribunal.

18.9 Where an exemption is granted, breach of any condition of the exemption will immediately render the exemption null and void.

18.10 When an exemption request is submitted notice shall be sent to all property owners directly adjacent to the fence for which the exemption is being sought.

18.11 Any request for a fence height beyond the authority set out in Section 18.5 of this By-law shall be considered by Council and subject to a fee as set out in the Town's fee by-law.

19. Ornamental Ponds

19.1 Every owner of a privately owned ornamental pond must meet the same requirements of sections 4, 6, 7, 15, 17, 18, 20 and 21 for a swimming pool enclosure.

20. General Exemptions

- 20.1 The provisions of this by-law relating to fences and swimming pool enclosures shall not apply to fences and swimming pool enclosures lawfully erected prior to the final passing of this by-law.
- 20.2 The provisions of this by-law shall not apply to acoustical fences or other similar fences which may be required by the Region of Durham from time to time.
- 20.3 Any federal, provincial or municipal fencing shall be exempt from the provisions of this by-law
- 20.4 If a person is required to erect a specified fence under a site plan agreement, a subdivision agreement, another Town by-law or any law, statute or regulation of a provincial or federal authority having jurisdiction, the fence is exempt from the provisions of this By-law with which it does not comply.
- 20.5 Any fence or swimming pool enclosure for which a fence exemption as outlined in section 17 has been granted, is deemed to comply with this article until it is replaced, and any replacement fence or swimming pool enclosure shall comply with this article.

21. Orders

- 21.1 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 the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.
- 21.2 An Order shall set out;
- (a) The location of the land where the contravention occurred; and
 - (b) Reasonable particulars of the contravention and the work to be done;
 - (c) The date by which the work must be done; and
 - (d) Notification that if the work is not done by the deadline, the municipality may have the work done at the expense of the owner and the expense may be recovered by adding the costs and any administration charge to the tax roll and collecting in the same manner as municipal property taxes.
- 21.3 An Order may be served;
- (a) personally, to whom it is directed;
 - (b) by regular mail to the last known address of the person;
 - (c) by registered mail to the last known address of the person; or
 - (d) by posting the Order on the property it pertains to.

- 21.4 If an Order is served personally or by way of posting at the property, service is deemed to have occurred on the date of the personal service or the date it is posted.
- 21.5 If an Order is served by regular or registered mail service is deemed to have occurred 3 business days after the day it was sent.
- 21.6 If a person fails to comply with an Order the Town may, with its servants or agents enter upon the property and affect such compliance at the expense of the defaulting person and may recover the cost, together with an administration charge equal to 25 percent of the total costs, by adding the expense to the tax roll and collecting it in the same manner as municipal taxes.
- (a) The expense in relation to a division fence shall be determined in accordance with the Town of Whitby Division Fence By-law.

22. Offences

- 22.1 No person shall fail to comply with any provision of this by-law;
- 22.2 No person shall fail to comply with an Order.
- 22.3 No person shall prevent, hinder or interfere or attempt to prevent, hinder or interfere with an inspection or investigation undertaken by an officer.

23. Enforcement and Penalties

- 23.1 Municipal Law Enforcement Officers shall be responsible for the administration and enforcement of the By-law.
- 23.2 Any owner or any person who fails to comply with an Order is liable to a fine or penalty for each offence, exclusive of costs as prescribed by the Provincial Offences Act, R.S.O. 1990 c.P33.

Administrative Penalty System

- 23.3 Every person who contravenes or fails to comply with a provision of this By-Law is guilty of an offence and is liable to the penalty as set out in Schedule "B" to this By-Law.
- 23.4 Tiered and Escalating Penalties: If a person receives a Penalty Notice in accordance with the Town's Administrative Penalty By-law for an offence, the person shall be liable to pay to the Town a tier one (1) administrative penalty amount for that offence as specified in Schedule "B" to this By-law. If a person receives an additional Penalty Notice for the same offence within ninety (90) calendar days or less from the date of the Penalty Notice containing a tier one (1) administrative penalty amount, the person shall be liable to pay to the Town a tier two (2) administrative penalty amount for that offence as specified in Schedule "B" to this By-law. If the person receives a subsequent Penalty Notice for the same offence within ninety (90) calendar days or less of the Penalty Notice containing a tier two (2) administrative penalty amount, the

person shall be liable to pay to the Town a tier three (3) administrative penalty amount for that offence as specified in Schedule “B” to this By-law. If the person receives any subsequent Penalty Notices for the same offence within one hundred and eighty (180) calendar days or less from the date of the Penalty Notice containing a tier three (3) administrative penalty amount, the person shall be liable to pay to the Town a tier three (3) administrative penalty amount for that offence as specified in Schedule “B” to this By-law.

23.5 Where there is a conflict between this By-law and any other by-law of the Town, the provisions of this By-law shall prevail.

24. Severability

24.1 If a court of competent jurisdiction declares any section, or any part of any section of this by-law to be invalid or to be of no force or effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.

25. Short Title

25.1 This By-law may be referred to as the “Fence By-law”

26. Repeal of Existing By-law

26.1 By-laws 4394-99 and any amending by-laws thereto, are hereby repealed

27. Effective Date

27.1 This By-law shall come into force on January 1, 2026.

By-law read and passed this Select date day of Insert Month, Year.

Elizabeth Roy, Mayor

Christopher Harris, Town Clerk

Schedule “A” Fence By-law Exemption Process

Overview

The Municipal Act, 2001 allows municipalities to pass by-laws regulating structures, including fences. The Council of the Town of Whitby adopted Fence By-law # 4394-99, as amended (the Fence By-law), for the purpose of prescribing the height and description of fences.

The provisions of the Fence By-law are absolute, however there are circumstances where flexibility from certain provisions contained in the Fence By-law are appropriate.

The purpose of this Schedule is to outline the process for seeking exemptions to the provisions of the Fence By-law, the types of exemptions that may be granted, and to provide an overview of the administration of the exemption process.

Responsibilities

The Municipal Licensing and Standards Committee (MLSC) shall be responsible for considering all Fence By-law exemption applications between the heights above 2.2 metres (7 feet 2 inches) and 3.0 metres (9 feet 10 inches).

The MLSC is an independent quasi-judicial body appointed by Council. Council does not ratify and cannot appeal a decision of the MLSC related to Fence By-law exemptions.

The MLSC is authorized to provide the following exemptions from the provisions of the Fence By-law:

- Exemptions from the height maximums in the Fence By-law, noting that exemptions for minimum fence heights required for pool enclosures or other minimum fence heights identified in other Town By-laws (e.g., salvage yard fencing) are not eligible for exemptions; and,
- Exemptions from the setback distances of fences from an intersection in the Fence By-law, noting that fences that create unsafe conditions, obstruct the visibility of motorists, or obstruct traffic signs or control devices are not eligible for exemptions.

Requests for exemptions from other provisions of the Fence By-law are not available and shall not be considered by the MLSC.

Applications

An owner may apply for an exemption from the height maximums and/or the setback distances from an intersection in the Fence By-law by providing the following to the Town's Legal and Enforcement Services Department:

- A Fence By-law exemption application on a form to the satisfaction of the Commissioner, Legal and Enforcement Services/Town Solicitor, or their designate;
- The applicable fee for an exemption application as identified in the Town of Whitby Fees and Charges By-law, as amended, has been paid in full;
- A description of the fencing, the exemption being sought, and any circumstances, including the grading of surrounding lands, that support the request for an exemption;
- A drawing of the property clearly identifying the location of the fence;
- In the case of an existing fence, photographs of the fence; and,
- Any other information that, in the opinion of the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate, is necessary for the assessment of the exemption application.

Circulation of Applications

Upon receipt of a complete Fence By-law exemption application, the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate shall circulate notice of the application to adjacent property owners directly affected by the application to determine if there are objections to the application.

In instances where a Fence By-law exemption application abuts or may otherwise potentially impact Town property, the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate, shall circulate the application to relevant Town departments for review and comment.

Hearing of Applications, Guiding Principles and Limitations

When considering exemptions from the provisions of the Fence By-law, the MLSC shall:

- Review the application and any supporting documents;
- Review any related staff reports and written submissions, including any objections;
- Meet in a public forum (in-person or virtual format) and hear presentations by applicants and any other interested party; and,
- Make a decision based on the reports, submissions, and public presentations to approve with or without conditions, refuse, or table the application.

Further to the section above, an exemption shall not be granted as a matter of course, or as-of-right. In determining whether an exemption shall be granted, the MLSC shall take the following into consideration when assessing the appropriateness of exemptions from the provisions of the Fence By-law:

- Whether there is a need for the exemption, or whether an exemption is desirable for the lands in question;
- Whether the exemption maintains the general intent and purpose of the Fence By-law;
- Whether an exemption would create a negative impact on adjacent property owners and residents; and,
- For exemptions from the height maximums, the grading of surrounding land and the perceived height of fencing from the perspective of neighbouring properties.

When considering exemptions from the height maximums in the Fence By-law, maximum fence heights of up to 3 metres in total height may be provided by the MLSC where deemed appropriate, in consideration of the factors noted above. Maximum fence heights of 3 metres shall generally be reserved for exterior side yard, interior side yard, and rear yard fencing. Fence height exemptions above 3 metres in total height are not available.

When considering exemptions from the setback distances from an intersection in the Fence By-law, only open fencing located wholly on private property that provides sufficient visibility through the fence structure to maintain pedestrian and motorist sight lines shall be permitted.

Applicability of Other Legislation

Fences that are approved for exemptions to the Fence By-law remain subject to the provisions of the Division Fence By-law # 3657-95 and the Line Fences Act, R.S.O. 1990, c. L.17.

Final and Binding

The decisions of the MLSC shall be considered final and binding, and not subject to appeal or review to Town Council, a Court or other Tribunal.



Schedule “B” Administrative Penalties

Town of Whitby By-law # XXXX-25

Item	Description	By-law Section	Tier 1 (one)	Tier 2 (two)	Tier 3 (three)
1.	Excavate for or erect swimming pool without permit	3.1	\$500.00	\$750.00	\$1000.00
2.	Alter, erect or remove a fence on a heritage property without a heritage permit	2.1	\$500.00	\$750.00	\$1000.00
3.	Failure to maintain pool enclosure	4.1	\$500.00	\$750.00	\$1000.00
4.	Place water in swimming pool without complete pool enclosure	4.6	\$500.00	\$750.00	\$1000.00
5.	Failure to kept pool enclosure secured when the pool is not in use	4.9	\$500.00	\$750.00	\$1000.00
6.	Failure to remove or lock ladder of above ground pool when not in use	5.4	\$500.00	\$750.00	\$1000.00
7.	Failure to lock swimming pool enclosure gates when pool is not in use	6.1	\$500.00	\$750.00	\$1000.00
8.	Failure to erect or maintain temporary fencing around swimming pool	7.1	\$500.00	\$750.00	\$1000.00

9.	Failure to lock hot tub, whirlpool or swim spa when not in use	8.2	\$500.00	\$750.00	\$1000.00
10.	Have fence greater than 2 meters in height on residential property	9.1	\$500.00	\$750.00	\$1000.00
11.	Erect or cause to be erected a fence of materials not usually intended for use in permanent fencing	9.3	\$500.00	\$750.00	\$1000.00
12.	Erect or cause to be erected a fence in a front yard higher than 1 meter	9.4	\$500.00	\$750.00	\$1000.00
13.	Erect or cause to be erected a fence which obstructs the vision of motorist of pedestrians	13.1	\$500.00	\$750.00	\$1000.00
14.	Erect, maintain or permit a fence on any lands under the ownership of the Town	14.2	\$500.00	\$750.00	\$1000.00
15.	Fail to maintain pool enclosure or privacy screen or invisible safety net in good state of repair	15.1	\$500.00	\$750.00	\$1000.00
16.	Erect or cause to be erected a hazardous fence	16.1	\$500.00	\$750.00	\$1000.00
17.	Fail to comply with an Order	22.2	\$500.00	\$750.00	\$1000.00
18.	Prevent, hinder or interfere or attempt to prevent, hinder or interfere with an inspection or investigation undertaken by an officer.	22.3	\$500.00	\$750.00	\$1000.00