

CONSOLIDATED WITH BY-LAW 17-2013

THE CORPORATION OF THE TOWNSHIP OF MULMUR

BY-LAW NO. 14-2006

FENCE BY-LAW

WHEREAS the *Municipal Act, 2001*, S.O. 2001, s. 8, provides that a Municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001 s. 11 provides that a Municipality may pass by-laws respecting matters within a list of identified spheres of jurisdiction, including structures (which includes fences and signs);

NOW THEREFORE THE CORPORATION OF THE TOWNSHIP OF MULMUR BY THE MUNICIPAL COUNCIL THEREOF ENACTS AS FOLLOWS:

1. DEFINITIONS

For the purposes of this by-law:

- (a) **A building** means any permanent and temporary structure used or intended to be used for shelter, accommodation, or enclosure of persons, animals, or goods, but shall not include a lawful boundary fence.
- (b) **A corner lot** means a lot situated at the intersection of and abutting upon two or more streets, or upon two parts of the same street, the adjacent sides of which street or streets (or in the case of a curved corner, the tangents at the street extremities of the side lot lines) contain an angle of not more than 135 degrees. In the case of a curved corner, the corner of the lot shall be deemed to be the point of the street line nearest the point of intersection of the said tangents.
- (c) **A fence** means any barrier or structure constructed of chain link metal, wood, stone, metal, concrete, brick or other similar materials or combinations of such materials which is erected for the purpose of screening, safeguarding, retaining or enclosing property or delineating property lines. For the purposes of a swimming pool fence, a wall or some portion of the wall or walls of building or structure may form part of the required pool enclosure provided the height and other requirements of this by-law relating to the enclosure are met
- (d) **A sight triangle** means a triangular area devoid of buildings, structures and obstructions, formed by the street lines abutting a corner lot and a third line drawn from a point on a street line to another point on a street line, each such point being the required sight distance from the point of intersection of the street lines as specified in this bylaw.
- (e) **A swimming pool** means a body of water, exceeding 0.91 meters (3 feet) in depth at any point, located outdoors on private property contained by artificial means and used or maintained for the purpose of swimming, wading, diving or bathing, but does not include a natural or man-made pond, lagoon, or water reservoir.
- (f) **A property lot line** means a boundary line of a lot.

2. GENERAL

No person shall erect, own or maintain, or cause or permit the erection or maintenance of any fence on private property within the Township of Mulmur except in conformity with the provisions of this by-law.

3. FENCE HEIGHT

- (a) No person shall erect or cause to be erected a fence in an agriculture, rural or residential zone which is higher than 1.83 metres (6 feet) above grade, save and except as set out elsewhere in this section.
- (b) Where an agricultural, rural or residential zone abuts a commercial zone, the height of the fence shall be minimum 1.83 metres (6 feet) and maximum 3.05 metres (10 feet) in height.
- (c) Where an industrial zone abuts an agricultural, rural or residential zone, the height of the fence shall be 3.05 metres (10 feet) in height.
- (d) The height of a fence shall be measured from the higher adjacent grade where there is a grade difference on each side of the fence.
- (e) Notwithstanding any other provision of this section, a property owner may apply to the Township for written permission to build a fence that would otherwise contravene the height limitations set out herein, and Township Council shall make a determination on a case-by-case basis on whether to permit the said fence.

4. FENCE LOCATION

- (a) The location of any fence shall either be located directly on the lot line as determined by a registered survey prepared by an Ontario Land Surveyor; or shall be located on the inside of the lot line.
- (b) Where there is a dispute by neighbours about fences separating their properties, the disputes shall be dealt with pursuant to the provisions of the Line Fences Act, if applicable, otherwise through the civil courts or alternative dispute resolution. Other than fulfilling its statutory obligations under the Line Fences Act, the Township shall not participate in these proceedings.
- (c) No landowner shall place or permit to be placed on a corner lot any wall, fence, tree, hedge or other barrier, which would obstruct visibility above a height of 0.61 metres (2 feet) above the grade of the centre line of the road intersection on that portion of the lot within a sight triangle formed by the boundaries of the lot common within the road allowance lines and a straight line connecting points on each of the said boundaries measured a distance of 9 metres (30 feet) from the point where they intersect.

5. RESTRICTED FENCES

- (a) **Electric fences.** Except for invisible fences, no fences or attachment to a fence shall be used as a conductor of electricity unless the fence is located on lands that is in actual use for raising livestock, and the fence or attachment:
 - (i) is designed and installed only to contain livestock; and
 - (ii) has signs installed that are commercially designed for this purpose, at intersections of fence lines adjacent to public road allowances warning that the fence carries electricity.
- (b) **Barbed wire fences.** No barbed wire or other barbed or sharp material shall be used in any fences except in accordance with the following:
 - (i) on lands for the purpose of containing livestock;

- (iii) on the top of a fence on commercial or industrial lands having a minimum height of 2.4 metres (8 feet), provided that it projects inwards to the area enclosed at a 45 degree angle; or
 - (iv) as pre-approved in writing by the Council of the Township of Mulmur
- (c) **Roadside fences.** No person shall erect a fence bordering a public highway other than a Provincial Highway (A roadside fence) within the boundaries of the Township, other than a wire fence, without first obtaining a permit issued by the Township for that purpose.
- (i) Council shall determine each application for construction of a fence on a case-by-case basis. Council shall have the power to grant or deny approval of an application. Council shall have the power to approve, subject to such conditions as Council may set.
 - (ii) Any fence erected that does not comply with any conditions of approval set by the Township Council shall be deemed to be non-complying.
 - (iii) The erection of any type of roadside fences other than wire fences shall be discouraged. However, taking all relevant factors into consideration, other fences may be approved by the Council. Primary considerations will be snow accumulation and drifting and other factors that will influence normal maintenance requirements.
 - (iv) The Dufferin County Road Superintendent, or his/her designate will be notified of fence applications that border County Roads and will have the opportunity to make recommendations. These recommendations will be filed with the permit application.

6. SNOW FENCES

- (a) Notwithstanding compliance with other provisions of this by-law, the owners or occupants of properties bordering upon a public highway within the municipality shall take down, alter or remove any fence that causes an accumulation of snow or drifting so as to impede travel or interfere with winter road maintenance by the Township, as determined by the Director of Public Works or his/her designate.
- (b) The Township may, at any reasonable time, enter upon any land within the municipality or within an adjoining municipality and lying along any highway under its jurisdiction, including land owned by Her Majesty in right of Ontario, for the purpose of erecting and maintaining a snow fence, at the expense of the Township.
- (c) No person shall damage, remove or interfere with, a snow fence erected or maintained by the Township pursuant to this by-law.
- (d) The cost of repairing or replacing a snow fence erected or maintained by the Township, shall be recoverable by the Township from the person who damaged, removed or interfered with them.

7. SWIMMING POOLS

- (a) If an existing, privately owned outdoor pool, together with any fences and gates, conformed with the previous swimming pool by-laws (By-Laws No. 31-1988 and By-Law No. 19-1993), it is deemed to be exempt from the provisions of the swimming pool section of this by-law.
- (b) A building permit shall be required for every privately owned outdoor pool, together with the fences and gates, in all circumstances where, in the case of a new pool, an existing dwelling is already situated on an adjacent property within a distance of 200 metres or, in the case of an existing pool, where a new dwelling is lawfully constructed on any vacant, adjacent property where the new residence is within 200 metres of the pool. In the latter circumstances, the building permit shall be obtained and the required fence and gate shall be

installed prior to occupancy of the new dwelling on the adjoining property. In cases where a property will be in non-compliance with this by-law by reason of an adjacent residence being constructed closer than 200 metres, prior to the passing of this by-law, the owner of the swimming pool will have 1 (one) year from the date of passing of this by-law to come into compliance. A building permit is not required for an existing or new privately owned outdoor swimming pool which is at least 1.35 metres (4.43 feet) above ground **at its lowest point**, provided it is equipped with a lockable or removable security ladder.

- (c) Except as provided above, the owner of every privately-owned outdoor swimming pool shall erect and maintain a fence and gate or gates around such swimming pool, which shall comply with the following requirements:
 - (i) Fences and gates of chain link construction shall utilize 14 gauge or heavier wire and shall have a maximum mesh opening of 5 centimetres measured in any direction.
 - (ii) Every fence or gate whether of chain link, wood construction or wrought iron shall not be less than 1.5 metres (4.92 feet) in height, shall commence not more than 5 centimetres above ground level at any point, shall not be constructed of horizontally overlapping materials, shall provide for vertical openings of no more than 5 centimetres for chain link and wood construction and 10 centimetres for wrought iron fences, shall not otherwise facilitate climbing, and shall be supported by sufficient vertical structural members and be reinforced by sufficient horizontal and vertical structural members to maintain the overall structural soundness of the fence and gate.
 - (iii) Every gate shall be equipped with a self-closing device and self-latching device. Every self-latching device shall be located on the pool side of the fence at the tip of the gate and shall work with a self-closing device to keep the gate securely closed when not being held open.
 - (iv) No barbed wire shall be utilized.
 - (v) No electrical current shall be utilized.
 - (vi) there shall be no structures or landscape features on the outside of and within 1.0 m. of the fence that could facilitate scaling of the fence
- (d) No person shall place water in a privately owned outdoor swimming pool or allow water to remain therein unless a fence and gate or gates have been erected and every such fence or gate shall conform to the provisions of this by-law.
- (e) An exterior wall or walls of a building or a structure may be utilized to meet the requirements of this section provided;
 - (i) such wall or walls are a minimum of 1.5 m. in height above ground level at the lowest point;
 - (ii) such wall or walls shall not be constructed in such a way as to facilitate climbing, and ;
 - (iii) there shall be no structures or landscape features within 1.0 m. of the wall or fence that could facilitate scaling of the fence.
- (f) A boundary fence, which meets the specifications of this section, may be used to meet the requirements of this section.
- (g) All outdoor pools for which a permit is required shall comply with the set-back requirements of the Township Zoning By-law.

8. LEGAL NON-COMPLIANCE

- (a) Subject to any other provisions of this bylaw, fences legally established prior to and existing as of the date of passing of this by-law which do not comply with the provisions of this by-law shall be deemed to be legal non-complying and nothing in this bylaw shall prevent the strengthening or restoration to a safe condition of such a fence provided it is not located within any sight triangle, and provided that less than 50% of the area of the fence is in need of repair. If a fence is in need of repair of more than 50% of the area of the fence, the fence shall be deemed to have been destroyed and shall be removed.
- (b) Where for any reason, an existing non-complying fence is replaced or removed such non-complying use shall be terminated and any such new fence constructed shall conform to the provisions of this bylaw.
- (c) Notwithstanding the provisions of Section 8 (a), a fence may be deemed to be a safety hazard by Council.
- (d) A fence that is deemed to be a safety hazard shall be forthwith removed by the owner of the property at the owner ' s expense.

9. MAINTENANCE OF FENCE

The owner of the land on which a fence is erected shall maintain such fence in good state of repair.

10. ADMINISTRATION, ENFORCEMENT AND PENALTIES

- (a) The Municipal By-Law Enforcement Officer, upon written complaint by a property owner of the Township of Mulmur and/or by direction of a resolution passed by the Council of the Township of Mulmur shall administer and enforce the provisions of this By-Law.
- (b) The Township shall have the power to enter a property and remedy breaches of this by-law, at the expense of the owners and occupiers. The expense shall include the internal and external costs incurred by the Township, including the cost of any restoration. The internal costs of the Township include the administrative, labour and material costs allocated to the doing of the work, including the reasonable overhead of the Township, together with such interest as may be allowed by the Municipal Act, 2001, or the by-laws of the Township.
- (c) The expenses may be recovered pursuant to the provisions of the Municipal Act, 2001, s. 427.
- (d) Except as otherwise provided in this section, any person who contravenes any sections 2, 3.(a), 5.(a), 5.(b), 5.(c), 6.(c), 7.(a), 7.(b), 9 of this By-law is guilty of an offence and subject to the provisions of the *Provincial Offences Act*.
- (e) Each day of contravention is a separate offence.
- (f) Upon the approval of the set fines established pursuant to the provisions of this By-law, any person who contravenes sections of this By-law as specified in the approved Set Fines Schedule, is liable to the set fines as set out in the said Set Fines Schedule as amended from time to time.
- (f) Any person found to be in contravention of sections of this By-law specified in the Set Fines Schedule shall be issued a notice of such contravention. Every such person may, within 72 hours of the time when such notice was issued, pay at the Township Municipal offices the set fine or fines as set out in Set Fines Schedule for and in full satisfaction of such contravention. The failure of such person to pay the set fine subjects him or her to the penalties hereinbefore provided for the violation of the provisions of this By-law.

- (g) The set fines shall come into force and effect upon receipt of the Judge's order from the Ministry of the Attorney General, and the approved Set Fines Schedule shall thereupon be annexed to this By-law.#

11. VALIDITY

If any section, subsection or provision of this by-law is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not effect the validity of the by-law as a whole or any part thereof other than the section, clause or provision so declared to be invalid and it is hereby declared that all remaining sections, clauses or provisions of this by-law shall remain in force and effect until repealed, notwithstanding that one or more provisions thereof shall have been declared to be invalid.

12. REPEAL

By-Law Numbers 31-1988 (swimming pool), 19-1993 (swimming pool), 13-1983 (fences), and 36-94 (fences bordering public highways) are hereby repealed

13. EFFECT

Except as otherwise specifically stated, this by-law shall come into force and take effect on the date of its final passing.

By-law No. 14-06 read a first, second and third time and duly passed this 20th day of June, 2006.

Terry Horner

Clerk

Gord Gallaughier

Mayor