

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW NUMBER 2000-105 AS AMENDED

OFFICE CONSOLIDATION

Being a By-law to prescribe the height and description of lawful fences in
The Municipality of Clarington and to repeal By-law 89-46 as amended.

WHEREAS the Municipal Act R.S.O. 1990, chapter M45, section. 210(25),
authorizes the passing of a By-law for prescribing the height and description of
lawful fences; and

WHEREAS the Municipal Act R.S.O., 1990, Chapter M45, Section 210(145),
authorizes the passing of a By-law for prohibiting the posting or exhibition of
placards, play bills, posters writing or pictures, or the writing of words, or the
making of pictures or drawings which are indecent or may tend to corrupt or
demoralize on any wall or fence;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
MUNICIPALITY OF CLARINGTON ENACTS AS FOLLOWS:**

1.0 TITLE

1.1 This By-law may be cited as the Fence By-law.

2.0 DEFINITIONS

- 2.1 DESIGNATED FRONT YARD shall mean the area of the yard extending
across the full width of a property between the assessed front property line
and a line running parallel to and 6 metres (19.7 feet) from the front
property line. The front yard being the shortest of the property frontages.
- 2.2 EXTERIOR SIDE YARD shall mean the side yard of a corner lot,
immediately adjoining a public street, which side yard extends from the
designated front yard to the rear property line between the exterior
property line and the nearest main building.
- 2.3 FENCE shall mean any structure constructed of posts, boards, palings,
rails, wire, masonry or similar materials or any combination thereof used to
define a property boundary or to enclose any outdoor area.
- 2.4 GRAFFITI shall mean any writing or pictures, which are indecent or may
tend to corrupt or demoralize.
- 2.5 HEIGHT shall mean the distance measured from the grade to the highest
point of the fence exclusive of the posts.
- 2.6 HOT TUB shall include any artificially enclosed body of water consisting of
water heating units and/or air jets used for bathing or other purposes as
intended and shall include a whirlpool or spa or other similar device.
- 2.7 MUNICIPALITY means the Corporation of the Municipality of Clarington.
- 2.8 OFFICER shall mean a Municipal Law Enforcement Officer or a Building
Inspector employed by the Municipality of Clarington.
- 2.9 OWNER shall include the registered owner of any property; the person for
the time being managing or receiving the rent of the land or premises in
connection with which the word is used, whether on the person's own
account or as agent or trustee of any other person, or who would so
receive the rent if such land and premises were let; and a lessee or
occupant of the property who, under the terms of a lease, is required to
repair and maintain the property in accordance with the standards for the
maintenance and occupancy of the property.
- 2.10 PERSON means an individual, sole proprietorship, partnership, limited
partnership, trust or body corporate, or an individual in his or her capacity
as a trustee, executor, administrator or other legal representative.

- 2.11 SWIMMING POOL means a privately owned outdoor swimming pool which includes any body of water or pool located outdoors on privately owned property contained in part or in whole by artificial means and designed or intended for swimming, diving or bathing but does not include a pool that is less than 61 centimetres (24 inches) in height or depth or a combination thereof.
- 2.12 SWIMMING POOL ENCLOSURE shall mean a fence as required by this By-law and used to enclose a swimming pool or hot tub.

3.0 GENERAL PROVISIONS

- 3.1 No person shall construct, erect, maintain or permit to be constructed, erected or maintained any fence within the Municipality which does not comply with the provisions of this by-law or any other applicable law.
- 3.2 No person shall construct, erect, maintain or permit to be constructed, erected or maintained any fence within the Municipality which contains barbed wire.
- 3.3 Notwithstanding Section 3.2 above, barbed wire shall be permitted in the following circumstances:
- (1) On a fence located on lands in an agricultural zone as prescribed by the Municipality's Comprehensive Zoning By-law and actively used for the purpose of keeping livestock, or
- (2) On the top of a fence erected on lands in a commercial or industrial zone as prescribed by the Municipality's Comprehensive Zoning By-law provided that the barbed wire projects inwards to the area enclosed by the fence.
- 3.4 No person shall erect, construct, maintain or permit to be erected, constructed, or maintained any fence equipped with a device for transmitting an electric current thereon or therethrough, except on land prescribed by the Municipality's Comprehensive Zoning By-law as agricultural and actively used for the purpose of keeping livestock, provided that the maximum electrical current does not exceed 120 volts at .04 amps and that it complies with The Energy Competition Act, S.O. 1998, and the regulations thereunder, as amended, from time to time.
- 3.5 No person shall post or exhibit placards, playbills, posters or graffiti on any fence within the Municipality.
- 3.6 The provisions of this By-law shall not apply to prohibit the erection of a fence for the purpose of public services provided by the Corporation of the Municipality of Clarington, any School Board, or any Public Authority including any Department of the Regional Municipality of Durham or any Department or Ministry of the Government of Canada or Ontario, or any Conservation Authority established by the Government of Ontario.
- 3.7 Lawful fences including approved pool enclosure fences constructed prior to the passing of this By-law shall be considered legal. Pool enclosure fences which have not received prior approval shall comply with regulations and conditions as set out hereinafter in Section 5.
- 3.8 Subject to the provisions of the Municipality's Comprehensive Zoning By-law, no person shall construct, erect, maintain or permit to be constructed, erected, or maintained, on any property a fence which, in the opinion of the Officer, by reason of its location, design or materials, obstructs the vision of drivers, either when leaving a roadway or when entering a roadway from another roadway or driveway, or which obstructs or detracts from the visibility or effectiveness of any traffic sign or control device on a public street or which, for any other reason, constitutes a hazard.

- 3.9 Replacement or reconstruction of all fences shall conform with the provisions of this By-law.

4.0 FENCES IN RESIDENTIAL ZONES

- 4.1 No person shall construct, erect, maintain or permit to be constructed, erected, or maintained, on any residential property as prescribed by the Municipality's Comprehensive Zoning By-law, a fence which exceeds a height of 2.14 metres (7 feet) in any rear, interior or exterior side yard.
- 4.2 No person shall construct, erect, maintain or permit to be constructed, erected, or maintained, on any residential property as prescribed by the Municipality's Comprehensive Zoning By-law, a fence which exceeds a height of 1.2 metres (4 feet) in any designated front yard.
- 4.3 Where a designated front yard abuts a rear or exterior side yard in a corner lot, the maximum permitted height of the fence shall be 2.14 metres (7 feet).
- 4.4 Notwithstanding Sections 4.2 and 4.3 above, fences shall be required to comply with all sight triangle regulations as set out in the Municipality's Comprehensive Zoning By-law.

5.0 SWIMMING POOL FENCES

- 5.1 Notwithstanding any provisions of this By-law to the contrary, no person shall excavate for, place or erect an outdoor swimming pool or hot tub without having first obtained a permit from the Chief Building Official or his designate, certifying the approval of the plans for the fences and gates required by this By-law, and upon payment of the prescribed fee. The fee for a swimming pool enclosure permit shall be set at \$75.00.
- 5.2 No person shall fill an outdoor swimming pool or hot tub with water or maintain such pool or tub filled with water until the fences and gates required by this by-law have been erected and approved around the swimming pool or hot tub.
- (1) Notwithstanding Section 5.2 above temporary fencing as approved by the Building Inspector or his designate may be used for a maximum period of 30 days until the basic construction of the swimming pool has been completed at which time permanent fencing shall be erected in accordance with this By-law.
- 5.3 No person shall construct, erect, maintain or cause to be constructed, erected or maintained, any swimming pool fence or enclosure, which does not comply with the specifications hereinafter set out in this By-law.
- 5.4 The fence to enclose a swimming pool or hot tub shall be constructed in a good workmanlike manner shall meet the following requirements:
- (1) Every fence shall not be less than 1.2 (4 feet) in height nor greater than 2.14 metres (7 feet) in height subject to general provisions as set out in this By-law;
- (2) Every fence shall be constructed of vertically boarded wood, solid wood, chain link, masonry, plastic, metal or other materials and shall be constructed in such a manner as to provide, in the opinion of the Chief Building Official and the Manager of Municipal Law Enforcement, an equivalent degree of safety;
- (3) Every fence shall be so constructed that no rails or other horizontal or diagonal bracing or attachments that may facilitate climbing, shall be located on the outside of the fence;

- (4) Every fence shall be constructed in such a manner that;
- (i) vertical boards shall not be less than 1.9 centimetres (.75 inches) by 8.9 centimetres (3.5 inches) lumber and shall be spaced not more than 3.8 centimetres (1.5 inches) apart where the horizontal climbable surface of the rails are spaced less than 1.2 metres (4 feet) apart and not more than 10.16 centimetres (4 inches) apart where horizontal climbable surfaces of rails are spaced at least 1.2 metres (4 feet) apart”;
 - (ii) where vertical boards of 1.9 centimetres (.75 inches) by 8.9 centimetres (3.5 inches) have been used and the horizontal spacing exceeds 3.8 centimetres (1.5 inches) a vertical board of not less than 1.9 centimetres (.75 inches) by a 3.8 centimetres (1.5 inches) may be used as a spacer to reduce the horizontal opening to less than the minimum required 3.8 centimetres (1.5 inches);
 - (iii) vertical boards shall be attached to horizontal rails that are not less than 3.8 centimetres (1.5 inches) by 8.9 centimetres (3.5 inches) lumber and that are supported on substantial posts with a minimum dimension of 8.9 centimetres (3.5 inches) spaced not more than 2.4 meters (8 feet) apart and embedded to a minimum depth of 90 centimetres (35.4 inches) below grade;
 - (iv) the maximum space between the grade level and the bottom of the fence shall not exceed 10.16 centimetres (4 inches) at any point.
- (5) A metal picket fence used to enclose a swimming pool shall be constructed in such a manner that;
- (i) vertical pickets shall be spaced not more than 3.8 centimetres (1.5 inches) apart where horizontal rails are spaced less than 1.2 metres (4 feet) and not more than 10.16 centimetres (4 inches) apart where horizontal rails are spaced at least 1.2 metres (4 feet) apart;
 - (ii) horizontal rails shall be supported on substantial posts not more than 2.4 metres (8 feet) apart and embedded in concrete to a minimum depth of 90 centimetres (35.4 inches) below grade.
- (6)(a) every chain link fence shall be constructed so that it complies to the following requirements,
- (b) where the fencing extends from the ground to a height of not less than 1.2 metres (4 feet) and not more than 1.8 metres (6 feet):
 - (i) chain link fencing, with diamond mesh not exceeding 3.8 centimetres (1.5 inches),
 - (ii) the mesh gauge shall consist of 11 gauge galvanized steel wire or vinyl coated chain link fabric 9 finished wire gauge or other equivalent material,
 - (iii) the gate and terminal posts shall be minimum 4.8 centimetres (1 7/8 inches) diameter and embedded in the ground to a depth of 90 centimetres (36 inches) in 20 centimetres (8 inches) diameter concrete,

- (iv) intermediate posts shall be a minimum 3.8 centimetres (1 ½ inches) diameter and embedded 90 centimetres (36 inches) in the ground,
 - (v) the top rail shall be a minimum 3.2 centimetres (1 ¼ inches) and the bottom wire shall be a minimum 9 gauge galvanized or vinyl covered, threaded through the mesh or the mesh fasten to the bottom tension wire and bottom wire fastened to each post,
 - (vi) the gate frame shall be minimum 3.2 centimetres (1 ¼ inches),
 - (vii) the posts shall be spaced a maximum distance of 3 meters (10 feet) apart.
- (c) where the fencing extends from the ground to a height of not less than 1.8 metres (6 feet) and not more than 2.14 metres (7 feet):

- (i) chain link fencing, with a diamond mesh not exceeding 5.0 centimetres (2 inches),
- (ii) the mesh gauge shall consist of 9 gauge galvanized steel wire or vinyl coated chain link fabric 9 finished wire gauge or other equivalent material,
- (iii) the gate and terminal posts shall be minimum 6.0 centimetres (2 3/8 inches) diameter and embedded in the ground to a depth of 90 centimetres (36 inches) in 20 centimetres (8 inches) diameter concrete,
- (iv) intermediate posts shall be a minimum 4.8 centimetres (1 7/8 inches) diameter and embedded 1 meters (39 inches) in the ground,
- (v) the top rail shall be a minimum 3.5 centimetres (1 3/8 inches) and the bottom wire shall be a minimum 9 gauge galvanized or vinyl covered, threaded through the mesh or the mesh fasten to the bottom tension wire and bottom wire fastened to each post,
- (vi) the gate frame shall be minimum 3.2 centimetres (1 ¼ inches),
- (vii) the posts shall be spaced a maximum distance of 3 meters (10 feet) apart.

(7) Every fence shall be constructed or erected to have the only means of entry through the fence be by approved gates or doors which provide a degree of safety acceptable to the Building Inspector.

5.5 No person shall construct, erect, maintain or cause to be constructed, erected or maintained, any swimming pool fence which contains barbed wire.

- 5.6 No person shall construct, erect, maintain or cause to be constructed, erected or maintained, any swimming pool fence which contains any device for projecting an electrical current through the swimming pool fence.
- 5.7 A swimming pool enclosure shall be designed and constructed so that the principal entrance to any main building shall be located outside the enclosed area.
- 5.8 Where a wall of a building forms part of a swimming pool enclosure, any entrance through the wall to the enclosed area shall be no closer than 1.2 metres (4 feet) horizontally to the water's edge of the pool and shall be protected by a door that is,
- (1) kept locked at all times except when the enclosed area is in use,
 - (2) self-closing self-latching and equipped with a lockable device installed at least 1.53 metres (5 feet) above floor level if the door leads from any other area than a living area of a building.
- 5.9 A swimming pool gate shall meet the following requirements:
- (1) every gate shall be of a minimum height of 1.2 metres (4 feet) and meet the requirements of section 5.4;
 - (2) every gate shall be supported on substantial hinges and shall be equipped with self-closing and self-latching devices placed at the top and on the inside of the gate providing a degree of safety acceptable to the Building Inspector;
 - (3) every gate shall be of the same construction equivalent to that required of the fence;
 - (4) every gate shall extend down to within 10.16 centimetres (4 inches), of the ground or floor level.
- 5.10 The provisions of this By-law requiring the erection of a fence shall not apply to an above ground pool that complies with the following standards.
- (1) not less than 1.2 metres (4 feet) above grade;
 - (2) a guard not less than 90 centimetres (36 inches) high is provided around any platform or deck that is between 60.9 centimetres (2 feet) and 1.8 metres (5 foot 11 inches) above finished grade and 1.07 metres (3 feet 6 inches) high for decks greater than 1.8 metres above finished grade. Guards must comply with the Ontario Building Code.
 - (3) the outside walls of any swimming pool structure and any guard is free of any element or attachment that may facilitate climbing;
 - (4) no part of the swimming pool or adjoining deck structure are located closer than 1.2 metres (4 feet) to any lot line; and
 - (5) the point where a user of the above ground pool gains access to the pool is protected by a gate and enclosure which complies with Section 5 of this By-law.
- 5.11 There shall be a minimum 1.2 metres (4 feet) separation between the fence and the exterior edge of an inground swimming pool.
- 5.12 Notwithstanding Sections 5.4 to 5.11 above, a hot tub, which is enclosed by a substantial structurally adequate hard cover permanently attached to it or to its supporting structure and the cover is securely fastened and locked to prevent access at all times when not in use, shall be exempt from the fence provisions of this Section.
- 5.13 Every owner of a hot tub shall keep the hot tub covered and locked at all times when a responsible person is not present and supervising its use.
- 5.14 Every Municipal owned fence installed prior to the passing of this by-law is deemed to comply as a pool enclosure.

6.0 FENCES IN COMMERCIAL & INDUSTRIAL ZONES

- 6.1 No person shall construct, erect, maintain or permit to be constructed, erected or maintained, on any commercial or industrial property as prescribed by the Municipality's Comprehensive Zoning By-law, a fence which exceeds a height of 3.1 metres (10.2 feet).
- 6.2 Where a commercial or industrial property abuts a residential property as prescribed by the Municipality's Comprehensive Zoning By-law, the maximum permitted height of a fence shall be 3.1 metres (10.2 feet).

7.0 CONSTRUCTION AND MAINTENANCE

- 7.1 Every fence shall be designed and installed in such a manner as to meet its intended function using suitable and sufficient materials and in a manner accepted as good workmanship within the trades concerned.
- 7.2 All surfaces that have been previously painted, stained, varnished or which have received other similar protective finishes shall be maintained without visible deterioration.
- 7.3 Every fence shall be maintained in a structurally sound condition and in good repair.
- 7.4 Every owner shall maintain the fence abutting his property free of placards, playbills, posters and graffiti.

8.0 PENALTIES

- 8.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act.

9.0 TERMS AND CONDITIONS

- 9.1 The provisions of this By-law shall prevail unless otherwise specified within a Development Agreement, Site Plan Agreement, Subdivision Agreement or any other By-law of the Municipality.
- 9.2 In the event any part or provision of this by-law is held by a court of competent jurisdiction to be illegal, void, or ultra vires the jurisdiction of the Council of the Municipality of Clarington to pass, such provision shall be deemed to be severable and shall not invalidate any other provision of this By-law.
- 9.3 Words implying the singular number include plural and vice versa and words importing masculine gender includes the feminine.
- 9.4 Measurements listed in the Imperial system are provided for ease of reference only.
- 9.5 By-law 89-46 and its amendments are hereby repealed.
- 9.6 This by-law shall take force and effect upon the final passing thereof.