



# THE CORPORATION OF THE CITY OF WATERLOO

BY-LAW NUMBER 2013- 017

## A BY-LAW TO PROVIDE FOR THE REGULATION OF FENCES AND PRIVACY SCREENS WITHIN THE CITY OF WATERLOO

*WHEREAS section 11 (3)(7) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, (the "Municipal Act") authorizes a municipality to pass by-laws respecting fences;*

*AND WHEREAS section 8(3) of the Municipal Act authorizes a municipality to regulate or prohibit matters pertaining to fences and as a part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold or renewing the approval;*

*AND WHEREAS section 11(2)(6) of the Municipal Act authorizes a municipality to regulate matters related to health, safety and well-being of the inhabitants of the municipality;*

*AND WHEREAS section 23.2 of the Municipal Act authorizes a municipality to delegate legislative and quasi-judicial powers that are minor in nature to a body having at least two members of whom at least fifty percent are members of its council, individuals appointed by council, or a combination of the two;*

*AND WHEREAS section 446 of the Municipal Act authorizes a municipality, under a by-law, to direct or require a person to do a matter or thing and the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense, and the municipality may recover the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;*

*AND WHEREAS section 425 of the Municipal Act authorizes a municipality to pass a by-law providing that a person who contravenes a by-law of the municipality is guilty of an offence;*

*AND WHEREAS section 429 of the Municipal Act authorizes a municipality to establish a system of fines for the offences under a by-law;*

**THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF WATERLOO ENACTS AS FOLLOWS:**

**1. Definitions**

- 1.1 For the purpose of this by-law, the following terms shall have the corresponding meanings set out below:

**“Boundary Fence”** means a Fence located or partially located within 0.9 metres (3 feet) of a property line;

**“Building Code Act”** means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended (the “Building Code Act”);

**“Building Code”** means Ontario Regulation 350/06 of the Building Code Act, as amended;

**“Building Inspectors”** mean inspectors for the City appointed under section 3 of the Building Code Act;

**“Chief Building Official”** means a chief building official appointed under section 3 and 4 of the Building Code Act, as amended, or his or her designate;

**“City”** means The Corporation of the City of Waterloo;

**“Committee”** means the Fence Variance Committee;

**“Corner Lot”** means a lot situated at the intersection of two or more Highways or at the intersection of two parts of the same Highway meeting at an angle of not more than 135 degrees;

**“Director”** means the Director of By-law Enforcement or his or her designate(s);

**“Erect a Fence”** includes altering, constructing, or relocating a Fence, the replacement of more than 50% of the length or any Section of a Fence, and the causing or permitting the erection of a Fence;

**“Fees and Charges By-law”** means the City's current Fees and Charges By-law, currently being By-law #2012-061, as amended or replaced from time to time;

**"Fence"** means a protective, enclosing, or visual barrier of posts, wire, boards, rails, pickets, pilings, wood, metal, fiberglass, plastics, masonry, or similar materials or any combination thereof, and includes a wall or partition that is not an integral part of a building, but does not include a trellis or arbour;

**"Hedge"** means a continuous line of shrubs or other plant material;

**"Horizontal Top Rail"** means a board that is placed on top of the fence to which fence boards are attached;

**"Highway"** includes a common and public highway, street, avenue, parkway, square, place, bridge, viaduct or trestle, and part of which is intended for or used by the general public for the passage of vehicles and includes the area between the property lines thereof;

**"Lawful Fence"** means any Fence complying with the regulations prescribed in this by-law, regardless of the date erected, except where otherwise permitted in this by-law;

**"Municipal Law Enforcement Officer"** means an individual appointed by the Council of the City pursuant to s. 15 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;

**"Open Construction"** means construction of a Fence that has an open vertical surface space, enabling a clear view through such Fence.

**"Owner"** means the owner, tenant, lessee or other person in care and control of the property on which the Fence is located;

**"Person"** means an individual, firm, corporation, partnership, association or organization, including a charitable organization;

**"Privacy Screen"** means a Fence as described in section 6 of this by-law;

**"Section of a Fence"** means the portion of a Fence along a single line or boundary;

**"Visibility Triangle"** means the area within a triangle formed by measuring a prescribed distance along two specified intersecting lines and a third line joining the terminal points of the two measured lines;

**"Yard"** means any open, uncovered, unoccupied, space appurtenant to a building and:

- (a) "front yard" means a Yard extending across the full width of the shortest lot line, and lying between the front lot line and the nearest main wall of any building on the lot;

- (b) "flankage yard" means the Yard extended to the rear lot line, between the longer lot line abutting a Highway and the nearest wall of the main building or the building line on a Corner Lot, however will not include the any portion designated as a front yard;
- (c) "rear yard" means a Yard extending across the full width of the lot between the rear lot line and the nearest main wall of any building or the building line on the lot;
- (d) "side yard" means a Yard extending from the front yard to the rear yard between the side lot line and the nearest main wall of any building on the lot; and
- (e) where the front lot line, side lot line, and rear lot line are interpreted in accordance with the Zoning By-law, regardless of the location of any front door or driveway;

**"Zone"** means an area designated for a specified land use under the Zoning By-law, and "residential zone", "commercial zone", "industrial zone" and "agricultural zone" shall have corresponding meanings; and

**"Zoning By-law"** means City By-law #1108 and City By-law #1418, as amended or replaced from time to time.

- 1.2 The imperial measurements included in this by-law are for information only and are intended to be an approximate conversion of the metric measurements which shall prevail in the event of any conflict.

## **2. Calculation of Height**

- 2.1 The height of a Fence at any given point shall be measured from the grade at the base of the Fence, exclusive of any artificial embankment, provided:
  - (a) where changes in grade contours along the Fence line result in changes in height of the Fence, the height of the Fence is deemed to be the average height of the Fence over any 2.44 metre (8 foot) portion, and
  - (b) where grade elevations between adjacent lots differ at the boundary between the lots, the height of any Boundary Fence between the two lots shall be calculated in accordance with section 5 of this by-law.

### **3. Visibility Triangles – Driveways and Corner Lots**

3.1 No Person shall Erect a Fence or keep any Hedge that is:

- (a) within a Visibility Triangle formed by measuring at the intersection of the property lines in the corner of the lot, for a distance of 0.9 metres (3 feet) along one property line to 15 metres (49 feet) along the opposite property line, as shown in Schedule A, and
- (b) more than 0.9 metres (3 feet) in height within the Visibility Triangle formed by measuring a distance of 2 metres (6 foot 5 inch) at the intersection of any driveway and the property line of any Highway.

### **4. General Height Restrictions**

4.1 The maximum height of a Fence in a residential zone shall be no higher than:

- (a) 2.44 metres (8 feet) in height in the rear and sideyard,
- (b) 0.9 metres (3 feet) in the driveway Visibility Triangles and the front yard, and
- (c) 1.83 metres (6 feet) in the flankage yard;

4.2 Notwithstanding section 4.1, but subject to the provisions for Visibility Triangles in section 3 of this by-law:

- (a) gates may exceed the height restrictions prescribed in section 4.1 by a maximum of 0.3 metres (1 foot), subject to the requirements for Open Construction for Fences in front yards,
- (b) archways forming part of an entrance may have a height restrictions to a maximum of 2.3 metres (7 feet 6 inches),
- (c) decorative caps on structural posts may exceed the prescribed height restrictions to a maximum of 15 centimetres (5 inches),
- (d) Maximum fence height may be exceeded by a 5.08 centimetres (2 inches) Horizontal Top Rail, and
- (e) the maximum height of a Fence erected immediately adjacent to a building as a false facade shall be the height of the building provided the Fence does not cover a window on the property or on an adjacent property;

4.3 A Fence may be erected in a rear or side yard enclosing any tennis court or similar private sports facility, not including a pool, that is:

- (a) no higher than 3.66 metres (12 feet),
  - (b) constructed of chain link with adequate posts, support wires and bracing of a corrosive resistant or related material, and
  - (c) no closer than 0.6 metres (2 feet) to any property line;
- 4.4 In a commercial, industrial, or agricultural zone, as set out in the Zoning By-Law, no Fence shall exceed 3.04 m (10 feet) in height.

**5. Special Provision – Grade Differences Between Lots**

- 5.1 Where grade elevations of adjacent lots differ:
- (a) the height of any Boundary Fence shall be measured from the mean grade elevation between the two lots, and
  - (b) the portion of any Boundary Fence exceeding 2 metres (6 feet 5 inches) as measured from the lower of the two grades shall be at least 40% Open Construction.

**6. Height Restrictions – Privacy Screens**

- 6.1 In a residential zone, other than land used for multiple attached dwelling units, a Privacy Screen may be erected in a rear yard or side yard, provided:
- (a) the Privacy Screen is located at least 0.9 metres (3 feet) from any property line (the "Permitted Setback"),
  - (b) the maximum height of the Privacy Screen shall be 2.44 metres (8 feet) plus an additional 0.3 metres (1 foot) in height for each additional 0.3 metres (1 foot) that the Privacy Screen is set back from the Permitted Setback, to a maximum height of:
    - i. 3.04 metres (10 feet) if erected at ground level, or
    - ii. 2 metres (6 feet 5 inches) above a deck or platform if erected on the deck or platform,
  - (c) the portion of any Privacy Screen exceeding 2.44 metres (8 feet) in height as measured from the ground shall be of at least 40% Open Construction,
  - (d) no Privacy Screen on a Corner Lot shall be closer to the Highway than the portion of the main building nearest to the Highway, and

- (e) no Privacy Screen shall exceed 9 metres (29 feet 5 inches) in length along any Section of a Fence or 12 metres (39 feet 25 inches) in total length;

6.2 In a residential zone used for multiple attached dwelling units, Privacy Screens are not permitted, except upon a deck or platform in a rear yard provided:

- (a) the maximum height of the Privacy Screen shall be 2 metres (6 feet 5 inches) measured from the floor of the deck or platform,
- (b) the maximum projection of a Privacy Screen from the building shall be 3.66 metres (12 feet),
- (c) the Privacy Screen shall be set back at least 0.9 metres (3 feet) from any property line other than a property line which is the extension of a common wall between two dwelling units, and
- (d) no Privacy Screen on a Corner Lot shall be closer to the Highway than the portion of the building nearest the Highway.

## **7. Prohibitions**

7.1 No Person shall erect, have, or permit a Fence other than a Lawful Fence on property owned or occupied by that Person;

7.2 No Person shall Erect a Fence or cause a Fence to be erected:

- (a) which is wholly or partly constructed of barbed wire,
- (b) which is electrified,
- (c) in a manner that renders an existing swimming pool enclosure into non-conformity with the requirements of a by-law of the City applying to swimming pool enclosures,
- (d) if the Fence is constructed of brick, stone, cement, or masonry and more than 0.6 metres (2 feet) in height, without a building permit issued by the Chief Building Official of the City,
- (e) without adequate posts of 10 centimetre by 10 centimetre (4 inch by 4 inch) wood, or metal posts of a comparable strength, at intervals not exceeding 4.88 metres (16 feet), and sunk into the ground not less than 0.6 metres (2 feet), and
- (f) with the structural members located facing an abutting property without the consent of the Owner of that property unless the Fence is a chain link fence;

7.3 No Person shall replace, or cause or permit the replacement of, any Section of a Fence with anything other than similar suitable materials and in a manner that maintains a uniform appearance so as to not appear unsightly;

7.4 Notwithstanding section 7.2, where required for the safety or protection of a property in a Zone other than a residential zone, the portion of any Fence above 2 metres (6 feet 5 inches) may be wholly or partially constructed of barbed wire.

## **8. Prohibition of Fences on City Land**

8.1 No Person shall Erect a Fence on City property, including any Highway, without the expressed prior written consent of the City.

## **9. Application of By-law**

9.1 In the event of a conflict between the provisions of this by-law and the provisions of a by-law regulating pool enclosures within the City or the provisions of the Zoning By-law the provisions of those by-laws shall prevail over the provisions of this by-law to the extent of any conflict;

9.2 Nothing in this by-law applies to prohibit the construction of:

- (a) a noise barrier that is erected with the approval of the City under an engineering or similar agreement,
- (b) a Fence or wall required by the City as a condition of subdivision approval or site plan approval, or
- (c) a Fence for which variances have been granted pursuant to the provisions of the *Planning Act*, R.S.O. 1990, c. P.13;

9.3 Nothing in this by-law exempts a Fence from the requirements of other applicable legislation including the Building Code, the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, or prevents the construction of a railing required by the Building Code;

9.4 The provisions of this by-law do not apply to Fences erected by the City, Region of Waterloo, or other governmental authority. Notwithstanding this provision, the City shall be guided by and adhere to the provisions of this by-law except where necessary for matters of public safety, protection of property, or abatement of public nuisance.



## **10. Fence Variance and Amendments**

- 10.1 The City hereby establishes a Fence Variance Committee for the purpose of granting minor variances from the provisions of this by-law;
- 10.2 The Owner of a property, or authorized agent of the Owner, may make an application to the Committee for a minor variance from the provisions of this by-law or to appeal an administration decision regarding a Fence. Such applications shall be accompanied by the fee set out in the Fees and Charges By-law and such plans and specifications as the City may from time to time determine;
- 10.3 Application for variances from the provisions of this by-law shall be made in writing to the Committee on a form prescribed by the Director and the Director may require the following information:
- (a) the application fee as approved by the fee by-law,
  - (b) the name, address and telephone number of the applicant,
  - (c) reference to the section of the by-law from which the exemption is being sought,
  - (d) a statement whether the proposed Fence or Privacy Screen will be temporary or permanent,
  - (e) reasons why the exemption is being sought,
  - (f) a property survey,
  - (g) a site plan, and
  - (h) specifications pertaining to the description of the Fence, construction and installation of the Fence;
- 10.4 The Secretary to the Committee shall give notice, or direct that notice be given, at least seven (7) days prior to the hearing of an appeal by personal service delivery or ordinary mail to every Owner of land shown on the last revised assessment roll abutting property owners of the subject property, and to anyone who submitted to the Secretary to the Committee in writing a request for notice of an appeal;
- 10.5 The Committee shall be constituted hereafter described:
- a) The Committee shall consist of no more than five (5) and no less than three (3) members;

- b) The Committee members shall be appointed by Council and shall hold office for a term expiring on November 30 of the next municipal election year;
  - c) Any member of the Committee may resign from the Committee at any time upon sending written notice to that effect to the City Clerk; and
  - d) If any member ceases to be a member of the Committee before the expiration of his or her term, Council may appoint a new member for the unexpired portion of the term if total membership of the Committee is less than 3 members;
- 10.6 The City shall appoint a staff member to act as Secretary to the Committee. The Secretary to the Committee shall:
- a) arrange a meeting of the Committee to consider an application for a minor variance from the provisions of the by-law attached or an appeal of an administrative decision relating to a fence;
  - b) circulate details of the application to adjacent neighbouring property owners within a 60 metre radius of the applicant's property by prepaid first-class mail at least ten (10) days prior to the date of the proposed meeting;
  - c) take minutes of the meeting of the Committee;
  - d) keep on file records of all official business of the Committee; and
  - e) prepare and deliver notices as required by this by-law.
- 10.7 At the first meeting of the Committee, the members shall elect a chair from among themselves. When the chair is absent through illness or otherwise, the committee may appoint another member as acting chair;
- 10.8 The Committee shall meet as required and on a minimum of seven days' notice provided to the members by the Secretary to the Committee;
- 10.9 A quorum for a meeting of the Committee will consist of no less than (3) members of the Committee;
- 10.10 Each member present at a meeting of the Committee shall vote when the vote is taken, unless prohibited from doing so by reason of conflict of interest;
- 10.11 Upon reviewing an application, the Committee shall consider:
- (a) whether the request is minor in nature,

- (b) whether the proposed variance is desirable and in keeping with the Fences in the area, and
  - (c) whether the proposed variance affects safety or sight lines;
- 10.12 The Committee may grant or refuse any application for a minor variance or appeal from a decision as the case may be and that such relief as it considers appropriate be granted either absolutely or subject to conditions;
- 10.13 The Committee shall inform the applicant, as well as any abutting neighbours that submitted objections, of its decision by way of written notice setting out the grounds for the decision with reasonable particulars;
- 10.14 The decision of the Committee can be appealed to Council.

## **11. Grandfathering**

- 11.1 Fences erected prior to coming into force of this by-law are deemed to be Lawful Fences to the extent of compliance with the regulations for Fences contained in any by-law then applicable. To the extent of any non-compliance with previous by-laws covering Fences, such Fences shall be required to comply with this by-law.

## **12. Inspection**

- 12.1 The City may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with:
- (a) this by-law; or,
  - (b) an order made under section 431 of the Municipal Act;
- 12.2 For the purposes of conducting an inspection pursuant to section 12.1 of this by-law, the City may:
- (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; 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.

12.3 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.

### **13. Order to Discontinue Activity**

13.1 Where the Director has reasonable grounds to believe that a contravention of this by-law has occurred, the Director may make an order requiring the Person who contravened this by-law, or who caused or permitted the contravention, or the Owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity;

13.2 An order under section 13 of this by-law shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and

- (b) the date by which there must be compliance with the order;

13.3 An order under section 13.1 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.

### **14. Work Order**

14.1 Where the Director has reasonable grounds to believe that a contravention of this by-law has occurred, the Director may make an order requiring the Person who contravened this 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;

14.2 An order under section 14.1 of this by-law shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and

- (b) the work to be done and the date by which the work must be done;

14.3 An order under section 14 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.

## **15. Remedial Action**

- 15.1 If a Person fails to do a matter or thing, including comply with an order under this by-law, as directed or required by this by-law, the City may, in default of it being done by the Person directed or required to do it, do the matter or thing at the Person's expense. The City may recover the costs of doing a matter or thing from the Person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes;
- 15.2 The costs outlined in section 15 of this by-law shall include interest calculated at a rate of 15 per cent, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full;
- 15.3 The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office.

## **16. Enforcement**

- 16.1 This by-law may be enforced by a Municipal Law Enforcement Officer or Building Inspector.

## **17. Penalties**

- 17.1 Every Person who contravenes any of the provisions of this by-law is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty as set out in this by-law. All contraventions of this by-law are designated as continuing offences;
- 17.2 Every Person who contravenes an order under sections 13 or 14 of this by-law is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty as set out in this by-law;
- 17.3 Every Person, excluding a corporation, who is convicted of an offence is liable to a minimum fine of Three Hundred and Fifty Dollars (\$350.00) and a maximum fine of Twenty-Five Thousand Dollars (\$25,000.00) for the first offence and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for a subsequent offence;
- 17.4 Every corporation who is convicted of an offence is liable to a maximum fine of Fifty Thousand Dollars (\$50,000.00) for the first offence and One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence;

17.5 In addition to the fine amounts set out in sections 17.2 and 17.3, for each day or part of a day that an offence continues, the minimum fine shall be Three Hundred and Fifty Dollars (\$350.00) and the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all daily fines for the offence is not limited to One Hundred Thousand Dollars (\$100,000.00).

**18. Collection of Unpaid Fines**

18.1 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 Director 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;

18.2 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*.

**19. Schedules**

19.1 Schedule "A" shall form a part of this by-law.

**20. Severability**

20.1 Where a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

**21. Effective Date and Repeal**

21.1 This by-law comes into force and effect on April 1, 2013;

21.2 Except as provided by Section 21.3 hereof, By-law Number 05-88, as amended, is repealed on the date this by-law comes into force and effect; and

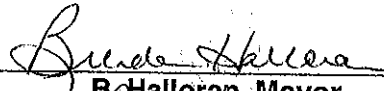
21.3 Notwithstanding Section 21.2, the provisions of By-law Number 05-88, as amended, is deemed to continue in force and effect with respect to any and all orders, appeals or prosecutions issued, filed or commenced under that by-law and any assessment, rate, charge, tax, fee, liability or penalty outstanding under By-law 05-88 may be collected as if such by-law had not been repealed.

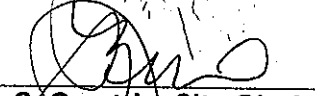
**22. Short title**

22.1 This by-law may be cited as the "Fence By-law".

Enacted this 4 day of March, 2013.

Approval	Date	Print Name	Initials
PS	Feb 15/13	Jim Barry	J
Legal	Feb 15/13	P. Wheeler	PW
Finance	Feb 15/13	N/A	S

  
B. Halloran, Mayor

  
S. Greatrix, City Clerk

# SCHEDULE A

## Daylight Corner (DLC)

