

TOWN OF FORT FRANCES

BY-LAW 40/17

A BY-LAW TO LICENCE AND REGULATE FENCES WITHIN THE MUNICIPALITY.

WHEREAS The Council of the Corporation of the Town of Fort Frances deems it necessary and expedient to pass a by-law to regulate fences within the Municipality.

AND WHEREAS The *Municipal Act, 2001*, as amended provides that a municipal power shall be exercised by by-law.

AND WHEREAS The *Municipal Act, 2001*, as amended authorizes a single tier municipality to pass by-laws respecting structures, including fences and signs;

AND WHEREAS The *Municipal Act, 2001*, as amended provides that a municipality may provide that the Line Fences Act does not apply to all or any part of the municipality;

AND WHEREAS The *Line Fences Act, R.S.O. 1990, Chapter L.17*, provides that, with the exception of section 20 the *Line Fences Act* does not apply to land in an area that is subject to a by-law for apportioning the costs of line fences passed under the *Municipal Act, 2001*;

AND WHEREAS on November 28, 2016, Council approved a recommendation from the Planning & Development Executive Committee to review and rewrite the Pool Fence By-Law.

NOW THEREFORE, the Council of The Corporation of the Town of Fort Frances enacts as follows:

SECTION 1- DEFINITIONS

“adjoining owner” – means the owner of the land that is adjoining to the land of another owner;

“corporation” – means The Corporation of the Town of Fort Frances;

“fence” – means a railing, wall, line of posts, wire, gate, boards, pickets or other similar substances used to endorse or divide in whole or in part a yard or other land to establish a property boundary or to provide privacy and includes any hedge or grouping or thick growth of shrubs or trees acting as continuous barrier which is other than an essential component to a building;

“intersection” – means the area embraced within the prolongation or connection of the lateral street lines of two or more streets that join one another at an angle, whether or not one street crosses the other;

“lane” – means a public thoroughfare which affords only a secondary means of access for vehicular traffic to abutting lots and which is not intended for general circulation;

“line fence” – means a fence marking the boundary between adjoining parcels of land;

“lot” – means a parcel of land which is capable of being legally conveyed pursuant to Section 50 of the Planning Act;

“lot, corner” – means a lot situated at the intersection of two or more streets, or at the intersection of a street and a railway right-of-way, or a lot butting on one or more parts of the same street, in which an interior angle of less than one hundred and thirty-five (135) degrees is contained, between the front and side lot lines abutting by the said street or streets;

“lot interior” – means a lot other than a corner lot;

“lot line” – means any boundary of a lot and/or the vertical projection thereof;

“lot line, front” - means

- a) in the case of an interior lot, the lot line dividing the lot from the street;
- b) in the case of a corner lot, the shorter lot line abutting the street;
- c) in the case of a through lot or a corner lot with two lot lines of equal length abutting roads, the lot line used for the principle entrance; and iv) in the case where a lot abuts only a road cul-de-sac, all of the frontage on the road cul-de-sac.

“lot line, rear” - means the lot line farthest from or opposite to the front lot line;

“lot line, side” - means a lot line other than a front or rear lot line;

“non-residential property” - means a property with uses other than residential or multi-residential and includes schools and other institutional uses but does not include a street or public walkways;

“open construction” - includes chain link or lattice or other similar open construction;

“owner” - means the registered owner, lessee, tenant, mortgagee in possess or the person in charge a parcel of land;

“officer” - means a Municipal By-Law Enforcement Officer or Provincial Offences Officer or a Police Officer or Chief Building Official, whose duties include the enforcement of this by-law;

“parcel of land” - means an area of land held in unity of ownership;

“person” - means an individual, firm, corporation, association, or partnership and includes an Owner;

“public authority” - means any Federal, Provincial, District or Municipal agencies, including local boards thereof, any Public Utility Commission including telephone, gas and hydro and all Boards of Education;

“residential property” - means a property that is used for residential purposes;

“sight triangle” - means a triangular area of visibility that is determined by measuring, from the point of intersection of two street lines of a corner lot a distance of 4.5 metres along each street line and joining such points with a straight line, or where the two street lines do not intersect at a point, the point where such street lines would intersect based on the projection of the street lines or the intersection of the tangents to the street lines. (See Diagram 1 — Schedule "A");

“street” - means a public highway or public road under the jurisdiction of the Corporation and which is presently open and maintained by the corporation on a year-round basis;

“street line” - means: the limit of the street and is the dividing line between a lot and a street;

“swimming pool” – means any outdoor structure, object or thing located on privately owned property that is intended to be used for swimming, wading, diving, bathing, soaking (including a hot tub) in which the depth of water at any point can exceed 0.6 metres (2 feet).

“temporary fence” - means: a fence erected or maintained for a defined and limited period of time and, in no case shall such duration exceed six months unless required to remain by law or by a public authority in the interests of safety;

“through lot” - means: a lot bounded on opposite sides by streets.

uncontrolled intersection means an intersection of two or more streets where no traffic lights or four-way stop signs are used to indicate the right-of-way;

“yard” - means any unoccupied space appurtenant to a building measured from the closest supporting structure of the building to the lot line. (See Diagram 2 —Schedule A);

“yard, front” - means a yard extending across the full width of the lot between the front lot line and the nearest part of any building or structure for which the yard is required;

“yard, rear” - means A yard extending across the full width of the lot between the rear lot line and the nearest wall of any building on the lot for which the yard is required;

“yard side” - means a yard extending from the front yard to the rear yard;

“zoning by-law” - means any by-law administered by the Town passed pursuant to section 34 of the Planning Act, R.S.O. 1990, c.P.13, or a predecessor or successor thereof, as may be amended from time to time.

SECTION 2 - GENERAL PROVISIONS

2.1 SHORT TITLE

This By-law shall be cited as the Fence By-Law.

2.2 SCOPE

Except where otherwise provided, the provisions of this By-law shall apply to all persons and property within the geographic limits of the Town of Fort Frances.

2.3 ENFORCEMENT

This By-law shall be enforced by a Municipal By-Law Enforcement Officer or Provincial Offences Officer or a Police Officer or Chief Building Official, whose duties include the enforcement of this by-law;

2.4 CONFLICTS WITH OTHER BY-LAWS

Where a provision of this By-law conflicts with a provision of another by-law in force in the Town, the provision that establishes the higher standard in terms of protecting the health, safety and welfare of the general public and the environmental wellbeing of the municipality, shall prevail to the extent of the conflict.

2.5 SEVERABILITY

Should any section of this by-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

SECTION 3 – FENCES – CONTRARY TO REGULATIONS

3.1 No person shall have, permit, construct, erect or maintain or cause to have permit, construct, erect, or maintain a fence within the Town of Fort Frances unless such fence is in compliance with this by-law, and/or any other by-law that may apply.

SECTION 4 – FENCES ON TOWN PROPERTY

4.1 No person shall have, permit, construct, erect, or maintain, or cause to have, permit, construct, erect, or maintain, a fence on property of The Corporation of the Town of Fort Frances, including any street, unless:

- a) written consent or authorization of the Corporation has been obtained;
- b) such fence conforms to the provisions of this by-law; and
- c) the person seeking to construct on Town property agrees, if required, to enter into an encroachment agreement with the Corporation to provide for the removal of same from the property as and when directed to do so.

SECTION 5 – GENERAL PROVISIONS – ALL FENCES

- 5.1 No fence shall be constructed, maintained or caused to be constructed or maintained such that it encroaches on or over a roadway or sidewalk or which adversely affects the safety of or constitutes an obstruction of view or impedes the passage of vehicular or pedestrian traffic
- 5.2 No fence shall be located or constructed so as to block access to a parking space as required by the Zoning By-Law unless such fence is constructed with a gate at least 2.59 metres (8.5 feet) wide giving access to such parking space.
- 5.3 Barbed wire and/or razor wire shall not be used on any residential property.
- 5.4 Notwithstanding the provisions of Section 7, barbed wire and/or razor wire may be used on residential or non-residential property as part of or in conjunction with any fence required by law for public safety or the protection of property, provided no barbed wire or razor wire is located less than 2.14 metres in height above the ground.
- 5.5 No fence may be electrified unless the land which it encloses is lawfully used for agricultural purposes or the containment of livestock.
- 5.6 Section 7 does not apply to fences used for agricultural purposes or the containment of livestock.
- 5.7 No fence shall be maintained or caused to be maintained in a damaged or un-repaired state or condition by reason of fire, decay or otherwise and all fences shall be constructed or caused to be constructed in a sound manner and shall be protected by paint, preservative or other suitable weather resistant material.
- 5.8 All fences including masonry, brick, stone and concrete, iron and metal bar fences shall be constructed and maintained in a manner to ensure safety, structural stability, and resistance to frost action.
- 5.9 Fences constructed of chain link, shall:

- a) be constructed of galvanized steel wire not less than 2.65 mm diameter (No. 12 gauge) or of minimum .89 mm diameter (No. 14 gauge) steel wire covered with vinyl or other approved coating forming a total thickness equivalent to 2.65 mm diameter (No. 12 gauge) galvanized wire; and
 - b) be supported by a minimum 38 mm diameter galvanized steel posts each securely embedded in concrete to a minimum depth of .6 metres below grade and spaced not more than 3.05 metres on centre. Horizontal top and bottom rails shall be of 31 mm minimum diameter galvanized steel, except that a 6 mm diameter galvanized steel tension rod may be substituted for the bottom horizontal rail.
- 5.10 Fences constructed of wood shall be supported by a minimum 89 mm by 89 mm or 125 mm diameter posts each securely embedded to a minimum depth of .6 metres below grade, be spaced not more than 3.05 metres on centre. The portion below grade treated with a wood preservative. Horizontal top and bottom rails shall be of a minimum of 38 mm by 89 mm utility grade or better.
- 5.11 Where in order to make repairs, alterations or improvements to a fence, an owner of the fence is required to enter upon the adjoining land; before entering said land the owner shall advise the Town of Fort Frances of the need to make such entry. Prior to entry the Town of Fort Frances will advise the adjoining owner of the need for entry on his land. The owner of the fence shall ensure that the adjoining land is left in the same condition it was prior to such entry.
- 5.12 Where a fence is being erected between two lots, unless otherwise agreed between the owners of the said lots, the posts and structural members shall be located on the side of the fence facing the lot whose owner is erecting the fence.
- 5.13 A fence may be erected as a means of protection or as a means of landscaping along any lot line. Provided that if the fence is a hedge or grouping or thick growth of shrubs or trees acting as a continuous barrier, it shall be located a minimum of .6 metres from the lot line.

SECTION 6 – RESIDENTIAL PROPERTY SPECIFIC PROVISIONS

- 6.1 On a lot used for residential purposes no person shall have, permit construct, erect, or maintain, or cause to have, permit construct, erect, or maintain a fence
- a) exceeding 1.22 metres in height within the front yard;
 - b) exceeding 1.83 metres in height within the rear or side yard, subject to the Sight Triangle provisions.
- 6.2 Notwithstanding section 6.1 fence height regulations shall not apply
- a) where such residential property is abutting and such fence is contiguous to a non-residential property, but in no event shall such fence exceed a height of 2.75 metres;
 - b) where grade elevations of adjacent lots differ, that portion of any fence exceeding 1.83 metres in height as measured from the lower of the differing grades shall be constructed of chain link, lattice or similar open construction so as to provide a uniform direct passage of light and air through not less than 60 percent of the surface of that portion of fence exceeding 1.83 metres as measured from the lower grade.
 - c) where the grade contours within a lot make compliance with the fence height regulations in Section 8 impossible, a fence may exceed 1.22 metres in height in the front yard, or 1.83 metres in height elsewhere on the lot, provided that the average height of the fence over any 2.44 metre portion does not exceed the said fence height regulations.

SECTION 7 – NON-RESIDENTIAL PROPERTY SPECIFIC PROVISIONS

- 7.1 On a lot used for non-residential purposes, no person shall have, permit, construct, erect, or maintain, or cause to have, permit, construct, erect, or maintain a fence
- a) exceeding 2.75 metres in height unless required by law or by a public authority in the interests of public safety to do so.
 - b) other than an unobstructed chain link fence having links of no less than 13.00 square centimeters and which does not otherwise exceed fence height requirements contained in this by-law that exceeds 1.2 metres in height if such fence is located within the sight triangle.
- 7.2 Notwithstanding section 20, fences around tennis courts may be erected to a maximum height of 3.7 metres provided that
- a) the fence shall be constructed of chain link with adequate posts, support wires and bracing of a corrosion resistant or treated material; and
 - b) shall not be located closer than .6 metres to any lot line.

SECTION 8 – LINE FENCES ACT

8.1 The Line Fences Act shall not apply to any part of the Town of Fort Frances.

SECTION 9 – SAFETY

9.1 Notwithstanding any height restriction for fences in this by-law, the Corporation or any public authority with jurisdiction over a specific use or matter may, in writing, permit a fence to whatever height is necessary to ensure public safety.

9.2 Notwithstanding any of the provisions herein to the contrary, where, in the opinion of the Corporation, an obstruction exists that adversely affects the safety of vehicular or pedestrian traffic, the height restrictions of this by-law shall not apply.

SECTION 10 – SIGHT TRIANGLE

10.1 Notwithstanding any of the provisions herein to the contrary, where, in the opinion of the Corporation, an obstruction exists within the sight triangle, the height restrictions of this by-law shall not apply.

SECTION 11 – CALCULATION OF HEIGHT

11.1 For the purpose of this by-law, the height of any fence is calculated from the mean grade elevation of the ground at the lot lines to the highest point of the fence.

11.2 Where the level of ground is altered or the base on which the fence is situate is arranged for the purpose of raising a fence to a height which would otherwise have been unlawful, there shall be included in the calculation of the height of the fence the vertical measurement of the alteration or of the arrangement.

SECTION 12 – SWIMMING POOL FENCE PROVISIONS

12.1 Every owner of a swimming pool shall ensure that a fence is erected and maintained surrounding such pool and the fence shall:

- a) have a height of not less than 1.2 metres (4 feet) measured from ground level to the top of the fence where the pool is located;
- b) Be located at a distance of not less than 1.5 metres (5 feet) from the swimming pool;

- c) The bottom of all fences shall be at grade level.
- d) Be equipped with a gate that can be locked with a locking mechanism located on the pool side of the gate at least 1 metre (3.3 feet) above ground level and have no opening between the bottom of the gate and the ground at any point directly below the gate;
- e) Be built with materials and maintained in such a manner so as to prevent the climbing thereof;
- f) Where an owner is exempt from the requirement of a fence as a pool enclosure under section 16, ensure that every ladder or other stair assembly providing access to the pool is locked in a position so as to prevent entry to the pool at all times when the pool is not being used.
- g) Where an owner is exempt from the requirement of a fence as a pool enclosure for a hot tub under section 16, ensure that the hot tub is adequately secured by a cover and locked and in place over the tub at all times when the tub is not in use.

SECTION 13 – OFFENCE AND PENALTIES

13.1 Any person who contravenes, suffers or permits any act or thing to be done in contravention of, or neglects to do or refrains from doing anything required to be done pursuant to any provisions of this By-Law or any permit or order issued pursuant thereto, commits an offence and except where specifically set out in Schedule “B” attached to and forming part of this By-Law, shall be liable of a fine of not more than \$5,000 pursuant to the Provincial Offences Act, R.S.O., 1990, c. P.33, As amended. Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.

13.2 An Officer and/or anyone under the Officer’s direction may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this by-law is being complied with.

13.3 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.

13.4 For the purposes of an inspection, the Officer may:

- a) require the production for inspection of documents 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 photographs necessary for the purposes of the inspection.

SECTION 14 – REMEDIAL ACTIONS

14.1 Every person who has, erects, constructs, maintains, or permits to be erected, constructed or maintained, any fence that does not comply with the provisions of this by-law shall forthwith take any necessary action to ensure that the fence complies with the provisions of this by-law.

14.2 In default of the work required by this by-law not being done by the person directed or required to do it, the Town, in addition to any other remedies it may have, may do the work or cause the work to be done, at the person's expense, and may enter upon the land, at any reasonable time for this purpose.

14.3 The Town may recover the costs incurred by it in doing the work or causing it to be done 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 property taxes.

SECTION 15 – EXCEPTIONS

15.1 The provisions of this by-law shall not apply to the erection of fences, temporary or otherwise, erected in the interest of public safety as may be determined by the Officer.

15.2 Notwithstanding any other provision herein, a fence, which is constructed as a requirement of a registered agreement or agreements entered into with The Corporation of the Town of Fort Frances pursuant to the provisions of the Planning Act, as amended, or any plans approved by the Town, shall be deemed not to contravene the provisions of this by-law.

15.3 This By-Law does not apply to a public authority which erects or causes to erect a noise barrier along a street or erects or causes to erect any other type of fence along a street for the purposes of ensuring public safety, noise control, or any other similar purpose.

15.4 Notwithstanding the provisions of this by-law to the contrary, save and except for a fence which is located within a sight triangle, any fence that is in existence prior to the date of the enactment of this by-law, and in compliance with other applicable regulations, including the Town of Fort Frances by-laws, shall be deemed to comply with this by-law and may be maintained with the same material, height and dimension as previously existed.

SECTION 16 – EXEMPTION

16.1 In the case of an above-ground swimming pool, a fence is not required where ALL of the following criteria are met:

- a) The vertical sides of the pool and any deck or other assembly forming part of the pool are the same or greater in height than the minimum height of the fence height requirements for pools; and
- b) Such vertical sides and assemblies are constructed and maintained in such a manner to prevent the climbing thereof; and
- c) Any ladder or stair providing access to the swimming pool or to any deck or other assembly forming part of the swimming pool is hinged and constructed in such a manner as to be latched in an upright position and is lockable or is equipped with a roll-down ladder cover or similar device that is lockable, thereby preventing entry to the pool;
- d) In the case of a hot tub, a fence is not required where the hot tub is adequately secured by a cover equipped with a locking device.

16.2 Every application for an exemption shall be in writing and shall contain the following supporting documentation:

- a) Property survey or site plan;
- b) Specifications pertaining to the description of the fence;
- c) Specifications pertaining to the construction and installation of the fence; and
- d) The application fee (if applicable).

SECTION 17 - REPEAL

17.1 By-Law 75/09 and By-Law 25/76 and all amendments are hereby repealed.

This By-Law shall come into force and take effect on the final passing thereof.

READ THREE TIMES and finally passed in open Council this _____ day of _____ 2017.

R. Avis, Mayor

E. Slomke, Clerk