

THE CORPORATION OF THE MUNICIPALITY OF FRENCH RIVER

BY-LAW 2009-45

BEING A BY-LAW TO REGULATE THE ERECTION
AND MAINTENANCE OF FENCES WITHIN THE
MUNICIPALITY OF FRENCH RIVER

WHEREAS subsection 10(2) of the Municipal Act, S.O. 2001, c. 25 as amended to October 22, 2008, provides that a municipality may pass by-laws respecting Structures, including fences and signs;

AND WHEREAS, section 98 of the Municipal Act, S.O. 2001, c. 25 as amended to October 22, 2008, provides that a municipality may provide that the Line Fences Act does not apply to all or any part of the municipality, but despite such by-law being passed, section 20 of the Line Fences Act continues to apply throughout the municipality;

AND WHEREAS, it is deemed expedient to exclude the Municipality of French River from the provisions of the Line Fences Act, R.S.O. 1990, c.L.17, as amended;

NOW THEREFORE the Council of The Municipality of French River hereby enacts the following:

SECTION I DEFINITIONS

1. In this by-law:

- (a) **“Municipal Law Enforcement Officer”** means the officer in charge of the By-law Enforcement of the Corporation of the Municipality of French River or his or her authorized subordinates or assistants;
- (b) **“Chief Building Official”** means the Chief Building Official appointed by Council under the Building Code Act, S.O. 1992, c 23, as amended, or the person who is appointed to act in that capacity during his or her absence;
- (c) **“Construct/erect”** means to build, reconstruct or relocate, and includes any preliminary physical operations such as cutting, grading, excavating, filing or draining, or any altering of any existing fence by the addition, extension or any other structural change;
- (d) **“Council”** means the council of The Municipality of French River.
- (e) **“Existing”** means existing as of the date of the passing of this by-law.

- (f) “**Fence**” means a freestanding structure, other than a building, erected at grade for the purpose of screening, safeguarding, delineating the boundaries of a property, restricting ingress to or egress from a property, providing security or protection to property.
- (g) “**Gate**” means any swinging or sliding barrier used to fill in or close an access in a fence.
- (h) “**Grade**” means the elevation of the finished level of the ground adjoining the fence exclusive of any artificial embankment or berms.
- (i) “**Hedge**” means a continuous line of thick shrubs or trees, which is densely planted and intended to be maintained at an even height.
- (j) “**Height**” means the distance measured from the effective ground level where the fence posts are embedded to the top of the said posts;
- (k) “**Highway**” means a common and public highway or Municipal road, and includes any bridges, trestle or viaduct or other structure forming part of the highway and except as otherwise provided, includes a portion of a highway.
- (l) “**Lot line**” means the boundary of a lot.
- (o) “**Lot Line, Front**” has the same definition as that in the Municipality’s Zoning by-law, as amended from time to time.
- (m) “**Non conforming**” means a structure which does not conform, comply, or agree with the regulations of this by-law on the date of its final passing thereof.
- (n) “**Non residential property**” means land used for other than residential purposes and includes land used for both residential and other purposes.
- (o) “**Officer**” means a municipal law enforcement officer, a Chief Building Official, a building inspector, a fire prevention officer, a fire fighter, a health inspector, or any other person appointed or employed by the municipality for the enforcement of by-laws and includes a peace officer;
- (p) “**Person**” means an individual, group, firm, corporation, association or partnership.
- (q) “**Residential property**” means land used for residential purposes and which are appurtenant to and used or associated with a dwelling, and include vacant lands abutting residential property.
- (r) “**Retaining wall**” means any structure constructed of concrete, wood, stone, metal, brick or other similar materials which are erected for the purpose of confining earth material and which are of a maximum height of 1 meter.

- (s) “**Municipality**” means the Corporation of The Municipality of French River.
- (t) “**Yard, front**” has the same definition as that in the Municipality’s Zoning by-law, as amended from time to time.
- (u) “**Yard, required**” has the same definition as that in the Municipality’s Zoning by-law, as amended from time to time.
- (v) “**Yard, rear**” has the same definition as that in the Municipality’s Zoning by-law, as amended from time to time.
- (w) “**Yard, side**” has the same definition as that in the Municipality’s Zoning by-law, as amended from time to time.
- (x) “**Zoning by-law**” means the Municipality of French River Zoning by-law 2003-23 as amended from time to time, or any version replacing the Zoning by-law 2003-23.

SECTION II GENERAL REGULATIONS

- 2. (a) All persons erecting a fence or causing a fence to be erected shall be responsible to ensure that they have a legal right to erect the fence on the proposed location. The Municipality will not be involved in property ownership disputes regarding property line location, private right-of-ways and easements.
- (b) No person shall erect a fence or cause a fence to be erected unless the fence is stable, vertical, made of material of good quality, suitable for the purpose, and constructed and supported in a manner commensurate with the design of the entire fence.
- (c) Every person who erects a fence or causes a fence to be erected shall keep such fence in good repair, in a safe and structurally sound condition, free from accident hazards, and protected by paint, preservative or other weather resistant material, except for wooden fences made of cedar, redwood or treated wood.
- (d) No person shall erect a fence or cause a fence to be erected which is wholly or partly constructed of barbed wire, chicken wire or other barbed or sharp materials, which is constructed of demolition material, used or new metal roofing, used or new corrugated tin or fibreglass, or the like, or which contains a device for projecting an electric current.
- (e) No person shall erect a fence or cause a fence to be erected on Municipal property, including any public highway.
- (f) No person shall erect a fence or cause a fence to be erected in any way that would alter the existing grades or drainage patterns of the premises, and the neighbouring properties, unless otherwise approved by a professional engineer.

- (g) No person shall erect a fence or cause a fence to be erected unless the fence is constructed and finished in such a manner as to present an acceptable finished side toward the public highway and the neighbouring properties.
- (h) Unsightly markings, stains or other defacements on the exterior surfaces of fences shall be removed and the surface shall be refinished when necessary.
- (i) No person shall erect or cause to be erected, on residential property or on lot lines of non-residential property abutting residential property, a chain link or metal wire fence that is not vinyl or powder coated.
- (j) No fence shall be erected or cause to be erected which obscures a clear view at street intersections, pedestrian or bicycle pathways, driveways, or other points of ingress or egress of vehicular or pedestrian traffic or within the sight triangle as per described in the Municipality's Zoning By-Law, as amended from time to time.
- (k) Notwithstanding the provisions of this by-law, 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 Municipality of French River by-laws, shall be deemed to comply with this by-law and may be maintained with the same material, height and dimensions as previously existed including any repair work that may be done to such fence.
- (l) No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any fence that may pose any risk of health, injury, or accident hazard.
- (m) No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any fence around a private outdoor swimming pool unless the possession, erection, construction or maintenance of the fence is done in compliance with all of the regulations of the Municipality of French River's Swimming Pool Fence By-Law 2001-13, or any version replacing by-law 2001-13.

SECTION III CALCULATION OF HEIGHT

- 3. (a) The height of a fence at any given point shall be measured from the grade at the base of the fence, as follows:
 - i) to the top of the fence where erected at grade and where there is no grade difference between the two sides of the fence; or
 - ii) from the higher grade to the top of the fence where erected at grade and there is a grade difference between the two sides of the fence.

SECTION IV SPECIFIC REGULATIONS – RESIDENTIAL PROPERTY

4. (a) No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained a fence on a lot used for residential purposes except in accordance with all of the regulations of this by-law.
- (b) No person shall erect a fence or cause a fence to be erected exceeding 2.13 metres (7 feet) in height in any side yard or rear yard, or exceeding 1.2 metres (4 feet) in height in any front yard.
- (c) No fence shall be located or constructed so as to block access to a parking space as required by the Municipality's 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.
- (d) Notwithstanding Subsection 4(b), where a property is abutting a non residential property, and such fence is contiguous to the non-residential property, the height of the fence shall not exceed 2.4 metres (8 feet).
- (e) Fences around tennis courts, in other than a required front yard, may be erected to a maximum height of 3.6 metres (12 feet).
- (f) Notwithstanding Subsection 4(b), in a side yard or rear yard:
 - (i) gates may exceed the height restrictions by a maximum of 30.4 centimetres (1 foot); and
 - (ii) archways forming part of an entrance may exceed the height restrictions to a maximum of 243.8 centimetres (8 feet);
 - (iii) decorative caps on structural posts may exceed the height restrictions to a maximum of 15.2 centimetres (6 inches).
- (g) No retaining wall exceeding 1 meter shall be erected or cause to be erected in any side yard or rear year without respecting the provisions of the Ontario Building Code. In such a case, a permit may be required from the Chief Building Official.
- (h) Where the front yard abuts to a street, no person shall erect a fence or cause a fence to be erected without respecting a 1 metre setback from the front lot line.

SECTION V SPECIFIC REGULATIONS – NON RESIDENTIAL PROPERTY

5. (a) No person shall erect a fence or cause a fence to be erected exceeding 2.4 metres (8 feet) in height in any side yard or rear yard, or exceeding 1.5 metres (5 feet) in height in any front yard.

- (b) Where the front yard abuts to a street, no person shall erect a fence or cause a fence to be erected without respecting a 1 metre setback from the front lot line, unless a site plan agreement with the Municipality is agreed upon by both parties.
- (c) Fences around tennis courts on lands used for non-residential purposes may be erected to a maximum height of 4.2 metres (14 feet).
- (d) No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any fence equipped with a device for transmitting an electric current thereon or there through, except on agricultural land used for the purpose of keeping livestock provided that the maximum electrical current does not exceed 120 volts at .04 amps and complies with all other applicable legislation.
- (e) Notwithstanding Subsection 2(d) of this by-law, no person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any barbed wire fence, except that barbed wire is permitted:
 - (i) on a fence erected on land used for agricultural purposes for the keeping of livestock or for the protection of property;
 - (ii) on the top of a fence erected on a lot used for commercial or industrial uses provided that it projects inwards to the area enclosed by the fence; or
 - (iii) on the top of a fence erected for security reasons around any facility owned, operated or maintained by any level of government or a utility provider.

SECTION VI LINE FENCES ACT – DIVISION FENCES

- 6. (a) The Line Fences Act shall not be not apply to any part of The Municipality of French River with the exception of section 20 of the Line Fences Act which continues to apply throughout the municipality.
- (b) Each of the owners of adjoining occupied land are to repair, replace or maintain a just proportion of any division fence heretofore or hereafter erected which marks the boundary of their respective properties, or are to bear a just proportion of the cost of any work or erection, repair, replacement or maintenance which has been carried out.
- (c) Where owners of adjoining land cannot agree on the type or kind of fence to be erected between them as provided by section 6(b) of this by-law, no contribution to the cost thereof is to be payable unless the party erecting the fence constructs a chain link fence 1.22 metres (4 feet) in height, which is in compliance with Subsection 2(i) of this by-law. Only upon such fence being constructed will the provisions of Subsection 6(b) of this by-law apply respecting the apportionment of costs of the said fence.

SECTION VII INSPECTIONS

7. (a) Under the Municipal Act, 2001, S.O. 2001 c.25 section 436(1), an Officer of the Municipality may, at any reasonable time, enter and inspect any land to determine whether a by-law, order or a condition to permit is being complied with.
- (b) For the purposes of an inspection, the Officer may:
 - (i) require the production for inspection of documents relevant to the inspection;
 - (ii) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (iii) require information from any person concerning a matter related to the inspection; and,
 - (iv) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purposes of the inspection.
- (c) A receipt shall be provided for any document or thing removed during an inspection and the document or thing shall be promptly returned after the copies or extracts are made.

SECTION VIII ORDERS

8. (a) If an Officer is satisfied that this by-law has been contravened, the Officer may make an order, known as an Order to Discontinue Activity, 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 discontinue the contravention.
- (b) An Order to Discontinue Activity shall set out:
 - (i) the municipal address of the property on which the contravention occurred;
 - (ii) the date of the contravention;
 - (iii) the reasonable particulars of the contravention of the by-law; and
 - (iv) the date by which there must be compliance with the order.
- (c) If an Officer is satisfied that a contravention of the by-law has occurred, the Officer may make an order, known as a Work 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 the work to correct the contravention.

- (d) The Work Order shall set out:
- (i) the municipal address or the legal description of the land;
 - (ii) reasonable particulars of the contravention and of the work to be done;
 - (iii) a deadline, being a specific date, for compliance with the Work Order;
- and
- (iv) a notice that if the work is not done in compliance with the Work Order deadline, the municipality may have the work done at the expense of the owner and the cost of the work may be recovered by adding the amount to the owner's tax roll.
- (e) An Order may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.
- (f) If the Municipality is unable to effect service on the owner under Subsection 8(e), it shall place a placard containing the terms of the Work Order in a conspicuous place on the land and may enter on the land for this purpose. The placing of the placard shall be deemed to be sufficient service of the Work Order.

SECTION IX REMEDIAL ACTION

9. (a) 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.
- (b) In default of the work required by this by-law or by a Work Order not being done by the person directed or required to do it, the Municipality may in addition to all other remedies it may have, do the work or cause the work to be done at the person's expense and may enter upon land, at any reasonable time, for this purpose.
- (c) The municipality shall recover all costs and expenses associated with actions taken and work done to land under this by-law in a manner provided by statute, whether by action or by adding the cost to the tax roll and collecting the cost in the same manner as the taxes.
- (d) 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. Upon receiving payment of all costs payable, the Municipality shall register a discharge of the lien in the proper Land Registry Office.

SECTION X OFFENCES

- 10.(a) Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties prescribed under the Provincial Offences Act, R.S.O. 1990, c.P 33, as amended.

- (b) No person shall hinder or obstruct an Officer, appointed under this by-law or employed to enforce this by-law, from carrying out an inspection of lands, nor shall any person obstruct any employee or agent authorized to carry out the work for the municipality in an order issued hereunder.

SECTION XI SEVERABILITY

- 11. (a) It is hereby declared that each and every of the foregoing provisions of this by-law is severable and that, if any provision of this by-law should for any reason be declared invalid by any Court, it is the intention and desire of this council that each and every of the then remaining provisions hereof shall remain in full force and effect.

SECTION XII ENACTMENT

- 12. (a) This by-law shall be known as the **“Fence By-Law”**.

- (b) This by-law comes into force and effect on the date of its passing and enactment.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
23rd DAY OF SEPTEMBER, 2009**