

# THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

## BY-LAW NO. 012-2020

Being a by-law to repeal and replace By-law No. 013-2005 being a by-law to regulate Fences in the Township of Wainfleet

**WHEREAS** the Municipal Act 2001, S.O. s.8, as amended, provides that the 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. s.11, as amended, provides that a municipality may pass by-laws respecting matters within a list of identified spheres of jurisdiction that includes Fences; and

**WHEREAS** the Municipal Act, 2001, S.O. s.446, as amended, provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, 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

**WHEREAS** the Municipal Act, 2001, S.O. s.434(1), as amended, provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under this Act.

**NOW THEREFORE** the Council of the Corporation of the Township of Wainfleet **HEREBY ENACTS AS FOLLOWS:**

1. **SHORT TITLE**

- 1.1. This By-law may be referred to as the "Fence By-law" or the "Wainfleet Fence By-law."

2. **DEFINITIONS**

- 2.1. **Cannabis Production Facility** - means any land, building or structure used for growing, producing, processing, testing, destroying, storing, packaging and/or shipping of cannabis. A Cannabis Production Facility does not include growth, production and processing of four (4) or less cannabis plants on a lot for personal use and does not include the retailing of cannabis products under a retail operator license issued under the Cannabis License Act, 2018.

- 
- 2.2. **Closed-Style Fence** – means a Fence constructed so that at least two thirds of its vertical surface is closed space and that provides a visual barrier to shield any part of a yard from view from any adjacent property.
- 2.3. **Fence** – means a barrier, or any structure, except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining lands, and includes any hedge or shrub that has the same effect.
- 2.4. **Front Yard** – means the space, extended to the full width of the lot, including any side Lot Lines, between the main front wall of a dwelling and the Lot Line abutting a public highway, but on a corner lot means the space, extended to the full width of the lot, including any side Lot Line, between the shorter Lot Line abutting a public highway, other than a public lane, and the nearest wall of the main dwelling on the lot. For greater certainty, Schedule “B” attached hereto and forming part of this by-law shall illustrate an example of a Front Yard.
- 2.5. **Height** – means the dimension from the established finished grade of the property installing the Fence to the top of the finished Fence.
- 2.6. **Lot Line** – means a Lot Line is the boundary line on all sides of a lot that marks the division of properties.
- 2.7. **Open-Style Fence** - means a Fence constructed so that at least two thirds of its vertical surface is open space.
- 2.8. **Rear Yard** – means a yard extending across the full width of the lot between the rear Lot Line and a line drawn parallel or concentric thereto and through the point of the main wall of the main dwelling closest to the rear Lot Line. Where there is no rear Lot Line, the Rear Yard shall be measured from the intersection of the side Lot Lines to the closest point of the main wall of the main dwelling. For greater certainty, Schedule “B” attached hereto and forming part of this by-law shall illustrate an example of a Rear Yard.
- 2.9. **Security Fence** – means Fences and gates installed and used primarily to define the perimeter of protected areas, such as restricted areas, controlled areas, entry control/access control points, installation perimeters, and to provide a physical and psychological deterrent to entry and preventing unauthorized personnel from entering a protected area.
- 2.10. **Side Yard** – means a yard extending from the Front Yard to the Rear Yard between the side Lot Line and a line drawn parallel or concentric thereto and through the point of the main wall of a dwelling closest to the side Lot Line. For greater certainty, Schedule “B” attached hereto and forming part of this by-law shall illustrate an example of a Side Yard.

- 2.11. **Sight Triangle** – means a 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 9.2 metres (30 feet) from the point where they intersect and in a case where the lot boundaries abutting the intersecting roads are joined by a curve, the area between the chord joining the beginning and ending of such curve and the road line.
- 2.12. **Swimming Pool** – means any outdoor structure or thing located on privately owned property that is capable of being used for swimming, wading or bathing and in which the water depth at any point can exceed 0.6 metres (2 Feet)
- 2.13. **Swimming Pool Enclosure** – means a Fence, wall, pool wall or other structure, including any permitted door, gate or other opening, which surrounds and restricts access to an outdoor Swimming Pool to a minimum Height of 1.22 metres (4 feet) and does not facilitate climbing.

### 3. **APPLICATION OF THIS BY-LAW**

- 3.1. This by-law shall apply to all property in the Township of Wainfleet.

### 4. **SCOPE**

- 4.1. No person shall erect, own or maintain, or cause or permit the erection or maintenance of any Fence on private property that does not comply with this By-law and with any other applicable law.

### 5. **FENCES**

#### 5.1. **Fence Height**

- 5.1.1. No person shall erect, own or maintain, or cause or permit the erection or maintenance of any Fence of a Height greater than 1.22 metres (4 feet) above grade in a Front Yard.
- 5.1.2. No person shall erect, own or maintain, or cause or permit the erection or maintenance of, any Fence of a Height greater than 1.83 metres (6 feet) above grade in a Rear Yard or Side Yard.
- 5.1.3. Notwithstanding 5.1.1 and 5.1.2, where a residential zone abuts an industrial or commercial zone, every person may construct a Fence to a maximum Height of 2.4 metres (8 feet).
- 5.1.4. Notwithstanding 5.1.1 and 5.1.2, where an industrial zone abuts a rural zone, every person may construct a Fence to a maximum the Height of 2.4 metres (8 feet).

## 5.2. **Properties that Abut Lake Erie**

- 5.2.1. On property that abuts Lake Erie, no person shall erect a Closed-Style Fence in the Rear Yard that is located more than 3.65 metres (12 feet) from the rear wall of the main dwelling on the property.
- 5.2.2. On a vacant lot property that abuts Lake Erie, the Rear Yard shall be deemed to commence from a distance equivalent to the rear wall of a dwelling on an adjacent lot that is closest to Lake Erie.

## 5.3. **Fences around Cannabis Production Facilities**

- 5.3.1. An approved Cannabis Production Facility shall erect and maintain a Security Fence around the perimeter of any building, land or structure that is used for growing, producing, processing, testing, destroying, storing, packaging and/or shipping of cannabis at a Height of 2.4 metres (8 feet).

## 6. **FENCE CONSTRUCTION MATERIALS**

- 6.1. No person shall erect, own or maintain, or cause or permit the erection or maintenance of any Fence composed wholly or partially of used vehicle tires, barbed wire, razor wire or sheet metal.
- 6.2. No person shall erect, own or maintain, or cause or permit the erection or maintenance of an electrical Fence, except in an agricultural or rural zone.

## 7. **FENCE LOCATION**

- 7.1. The location of a line Fence is the responsibility of the property owners and shall be located directly on the Lot Line, as determined by a registered survey prepared by an Ontario Land Surveyor. Should the Fence not be a line Fence, then it must be contained wholly within the property of the person constructing said Fence.

## 8. **SIGHT TRIANGLES**

- 8.1. No person who uses any land or erects buildings or structures thereon shall place in or on a corner lot any wall, Fence, tree, hedge or other barrier, which would obstruct visibility above a Height of 0.6 metres (2 feet) above the grade in a Sight Triangle.

## 9. **SWIMMING POOL ENCLOSURES**

- 9.1. Every owner of a privately owned Swimming Pool shall erect and maintain a Fence completely surrounding such Swimming Pool in accordance with the provisions of this By-law.

- 9.2. Notwithstanding Section 9.1 of this By-law, an owner of an above-ground Swimming Pool is not required to erect a Fence surrounding said structure provided the following provisions are met:
- i. the wall of the pool structure, provided that there is no deck, is at least 1.22 metres (4 feet) in Height above grade;
  - ii. there is no exterior horizontal or vertical or diagonal bracing on the Swimming Pool structure that may be used as a foothold or handhold to facilitate climbing;
  - iii. there are no footholds or handholds which reduce the effective Height of the wall to less than 1.22 metres (4 feet);
  - iv. that any stair, ramp, walkway or ladder providing access to an above-ground Swimming Pool structure are removed or raised and locked at a Height of at least 1.22 meters (4 feet) when the pool is not in use;
  - v. where any stair, ramp, walkway or ladder do not comply with Section 9.2(iv.), a Fence and self-closing gate both of which are at least 1.22 metres (4 feet) in Height shall enclose the stair, ramp, walkway or ladder;
  - vi. where any stair, ramp, walkway or deck is constructed, a building permit shall be obtained.
- 9.3. This section does not apply to inflatable or tube and liner construction above ground Swimming Pools.

## 10. MAINTENANCE OF FENCES

- 10.1. Every person shall maintain every Fence in a good state of repair as follows:
- i. the Fence is complete and in a structurally sound condition and plumb and securely anchored;
  - ii. the Fence is protected by weather-resistant materials; and
  - iii. the Fence components are not broken, rusted, rotten or in a hazardous condition.

---

**11. FENCE HEIGHT EXCEPTIONS**

- 11.1. The provisions of this By-law relating to the Height of Fences, except the provisions of Section 8 of this By-law, do not apply to lands owned or leased and used by:
- i. The Corporation of the Township of Wainfleet;
  - ii. The Regional Municipality of Niagara;
  - iii. Any Department or Agency of the Federal or Provincial Government;
  - iv. Any Public Utility including electricity, gas, telephone, or telegraph;
  - v. Any person or agency for the purpose of or incidental to the purpose of providing public transport;
  - vi. Any public or private school;
  - vii. Any person for the purpose of temporarily protecting any excavation or construction site.

**12. ADMINISTRATION AND INTERPRETATION**

- 12.1. Any Fence in existence at the date of passing of this By-law, which does not conform to the provisions herein, and which anytime thereafter, is in need of replacement or reconstruction, shall be built in conformity with the provisions of this By-law.
- 12.2. Where this By-law may conflict with any other by-law, this By-law shall prevail to the extent of the conflict.

**13. ENFORCEMENT**

- 13.1. The Municipal Law Enforcement Officer or their designate shall enforce the provisions of this By-law and are authorized to enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law is being complied with.
- 13.2. Where an owner fails to comply with any provision of this By-law, an order may be issued to the owner requiring compliance.
- 13.3. No Person shall hinder or obstruct a Municipal Law Enforcement Officer from carrying out an inspection of lands, nor shall any person obstruct any employee or agent authorized to carry out work for the Township specified in an order issued hereunder.

**14. PENALTY**

- 14.1. Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine or penalty as provided for in the Provincial Offences Act, R.S.O. 1990, as amended.
- 14.2. Any person who contravenes this By-law may be issued an administrative penalty in accordance with the AMPS By-law for Non-Parking Offences No. 027-2019 in accordance with Schedule "A", attached hereto and forming part of this By-law.

**15. SEVERABILITY**

- 15.1. Every provision of this By-law is declared to be severable from the remainder of the By-law, and if a court of competent jurisdiction shall declare any provisions of this By-law invalid, such declaration shall not affect the validity of the remainder of the By-law.

**16. MUNICIPAL REMEDIAL ACTION**

- 16.1. Any remedial works done under this by-law shall not be undone and the municipality shall not be required to provide compensation as a result of doing the remedial work.

**17. REPEAL**

- 17.1. By-law No. 019-2005 of the Corporation of the Township of Wainfleet and any other by-law relating to the regulation of Fences is hereby repealed.

BY-LAW READ AND PASSED THIS 10<sup>th</sup> DAY OF MARCH, 2020.

---

K. Gibson, MAYOR

---

M. Ciuffetelli, DEPUTY CLERK

**SCHEDULE “A” TO BY-LAW NO. 012-2020**

Short Form Wording and Administrative Penalties

Section	Short Form Wording	Penalty
4.1	Erect a Fence prohibited by this By-law	\$200.00
5.1.1	Erect a Fence in excess of Height requirements – Front Yard	\$150.00
5.1.2	Erect a Fence in excess of Height requirements - Rear Yard/Side Yard	\$150.00
5.1.3	Erect a Fence in excess of Height requirements – Where a residential zone abuts an industrial or commercial zone	\$150.00
5.1.4	Erect a Fence in excess of Height requirements – Where an industrial zone abuts a rural zone	\$150.00
5.2.1	Erect Closed-Style Fence where prohibited	\$150.00
5.3.1	Fail to erect a Security Fence – Cannabis Production Facility	\$250.00
6.1	Erect a Fence using prohibited materials	\$100.00
6.2	Erect an electrical Fence outside of an agricultural or rural zone	\$100.00
8.1	Erect a Fence in a Sight Triangle	\$100.00
9.1	Fail to erect a Fence around Swimming Pool	\$100.00
9.2 vi.	Fail to obtain permit	\$100.00
10.1	Fail to maintain a Fence	\$100.00
13.3	Hinder or obstruct a Municipal Law Enforcement Officer	\$250.00



SCHEDULE "B" TO BY-LAW NO. 012-2020

Illustration of the definition "Rear-Yard"

