

THE CORPORATION OF THE CITY OF THOROLD

BY-LAW NO. 28- 2008

BEING A BY-LAW RESPECTING THE REGULATION FOR THE ERECTION OF FENCES IN THE CITY OF THOROLD.

WHEREAS Subsection 11(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws respecting structures, including fences and signs;

AND WHEREAS Subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that the powers of a municipality shall be broadly interpreted so as to confer broad authorities on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to Municipal issues;

AND WHEREAS Section 98 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a local municipality may provide that the *Line Fence Act* does not apply to all or any part of any municipality;

AND WHEREAS the Council of The Corporation of the City of Thorold deems it expedient to provide that the *Line Fences Act* does not apply in the City of Thorold;

AND WHEREAS the Council of The Corporation of the City of Thorold deems it expedient to pass a by-law respecting fences in the City of Thorold;

AND WHEREAS the Council of the Corporation of the City of Thorold approved the recommendations of Report PBS2008-31 at a Special Council meeting held April 15, 2008;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF THOROLD ENACTS AS FOLLOWS:

SECTION 1 GENERAL PROVISIONS

1.1 SHORT TITLE

1.1.1 This by-law shall be known as the "Fence By-law".

1.2 DEFINITIONS

1.2.1 In this by-law:

- (1) "*acoustical barrier*" means a *fence* or structure erected to lessen the impact of a source of noise on the surrounding area;
- (2) "*agricultural operation*" means an agricultural operation as defined by the *Farming and Food Production Protection Act*;

- (3) “*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;
- (4) “*city*” means the Corporation of the City of Thorold or the geographical area of the municipality, as the context requires;
- (5) “*corner lot*” means a *lot* which abuts the point of intersection of two [2] *street lines* of the same street or different streets, where the angle of the intersection does not exceed one hundred and thirty five degrees [135°]. For the purposes of the foregoing definition, where there is a curve instead of a point of intersection:
 - (a) the angle of the intersection shall be deemed to be the angle, formed by the intersection of the tangents through the ends of the curve, or through the *interior lot lines* or through a combination thereof, as the case may require;
 - (b) the point of intersection shall be deemed to be that point on the *street line* nearest to the angle of intersection.
- (6) “*division fence*” means a *fence* built on a property line marking the boundary between abutting parcels of land;
- (7) “*electric fence*” means a *fence* through which electricity passes;
- (8) “*erect*” means to conduct any actions involved in the erection, installation, construction, extension or material alteration of a *fence*;
- (9) “*fence*” means a vertical structure, including a railing, *hedge*, line of posts, shrubs, wire, gate, boards or pickets or other similar substances used to enclose or divide in whole or in part a *yard* or other *land* or to establish a property boundary line, but does not mean a *privacy screen*;
- (10) “*fence of closed construction*” means a *fence* constructed so that at least two thirds of it’s vertical surface is closed space;
- (11) “*fence of open construction*” means a *fence* constructed so that at least two thirds of it’s vertical surface is open space;
- (12) “*ground level*” means the natural level of the grade immediately adjacent to the *fence*. Where the ground level is higher on one side of the *lot line*, the height of the *fence* shall be measured from the side with the greater height;
- (13) “*hedge*” means a closely planted row of bushes, shrubs or low trees forming a *fence* or boundary, but shall not include trees having a caliper dimension of 5 cm [2 in.] or greater;
- (14) “*highway*” means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- (15) “*land*” means an area of *property* and includes *lands*, tenements and hereditaments, and any estate or interest therein, and any right or easement affecting them;

- (16) “*lot*” means any parcel of *land* which can be alienated or otherwise disposed of separately and apart from any abutting *lands*, whether or not such parcel is described in a registered deed or shown on a registered plan of survey or subdivision;
- (17) “*lot line*” means any boundary of a *lot*, which may consist of one or more lines, straight or curved or both;
- (18) “*lot line, exterior side*” means the *lot line*, on a *corner lot*, which is a *street line* and not the *front lot line*;
- (19) “*lot line, front*” means a *street line*, provided that
- (a) where the *lot* abuts *street lines* of different lengths, the shorter *street line* shall be the *front lot line*;
 - (b) where the *lot* abuts *street lines* of equal length, the *street line* facing the principal entrance to the main building shall be the *front lot line*;
 - (c) where the *lot* abuts two streets which do not intersect, the *street line* facing the principal entrance to the main building shall be the *front lot line* and the *street line* opposite shall be the *rear lot line*.
- (20) “*lot line, interior side*” means a *lot line* which intersects a *front lot line* and abuts another *lot*;
- (21) “*lot line, rear*” means a *lot line* joining two side *lot lines*, other than a *front lot line*;
- (22) “*officer*” means a Municipal Law Enforcement Officer, a Building Inspector, a *Chief Building Official*, or other *person* appointed or employed by the *City* for enforcement of by-laws and includes both Police and Peace officers;
- (23) “*owner*” means a *person* or corporation who legally owns or controls the *property* under consideration;
- (24) “*person*” means and includes an individual, firm, corporation, association or partnership and includes an occupant or an *owner* of a *property*;
- (25) “*privacy screen*” means a visual barrier used to shield any part of a *yard* from view from any adjacent *land* or *highway*.
- (26) “*property*” means any grounds, *yard* or vacant lands;
- (27) “*sight triangle*” means that part of a *corner lot* bounded by two intersecting *street lines* and a third line drawn from a point in one *street line* to a point in the other *street line*, each such point being nine metres [9m] measured along the *street line* from the point of intersection of the *street lines*;
- (28) “*street line*” means the dividing line between a *lot* and a *highway*;
- (29) “*yard*” means *land*, other than publicly owned *land*, around and appurtenant to the whole or part of a building and used, or capable of being used in connection with the building.

- (30) “*yard, exterior side*” means that area of a *lot* lying between a building and an *exterior side lot line*, and bounded by a *front yard* and a *rear yard*;
- (31) “*yard, front*” means that area of a *lot* bounded by
- (a) the *front lot line*;
 - (b) the *side lot lines*; and
 - (c) a horizontal line coinciding with the exterior wall of a building facing the *front lot line*, produced to intersect the *side lot lines*.
- (32) “*yard, interior side*” means that area of a *lot* lying between a building and an *interior side lot line*, and bounded by a *front yard* and a *rear yard*;
- (33) “*yard, rear*” means that area of a *lot* bounded by
- (a) the *rear lot line*;
 - (b) the *side lot lines*; and
 - (c) a horizontal line coinciding with the exterior wall of a building facing the *rear lot line*, produced to intersect the *side lot lines*.
- (34) “*zone*” means an area designated by the City of Thorold Comprehensive Zoning By-Law, as amended, and established by that by-law for a specific use;
- (35) “*zone, commercial*” means a zone in which the use of *land*, buildings or structures is for sale of goods, provision of services or the general operation of business and without limiting the generality of the foregoing, may include stores, shops and offices;
- (36) “*zone, industrial*” means a zone in which the use of *land*, buildings or structures is for the manufacturing, processing, fabricating or assembly of raw materials or goods, warehousing or bulk storage of goods and materials and related accessory and ancillary uses;
- (37) “*zone, institutional*” means a zone in which the use of *land*, buildings or structures is for religious, charitable, educational, health or welfare purposes and without limiting the generality of the foregoing, may include churches, places of worship, public or private schools, public or private hospitals, community centres, and government buildings;
- (38) “*zone, residential*” means a zone in which the use of *land*, buildings or structures is for the sleeping or habitation of *persons* and without limiting the generality of the foregoing, may include dwellings (detached, semi-detached, multi-unit), apartments, and dormitories but shall not include hospitals or care facilities;

1.3 INTERPRETATION

- 1.3.1 In this by-law statutory references are to statutes of Ontario and the regulations made thereunder and shall be deemed to refer to such statutes and regulations as amended, consolidated, re-enacted and in force from time to time.

1.3.2 In this by-law the numbering system shall be referenced in accordance with the following:

1	section
1.1	subsection
1.1.1	article
1.1.1(1)	sentence
1.1.1(1)(a)	clause
1.1.1(1)(a)(i)	subclause

1.3.3 This by-law shall be read with all changes of gender and number required by the context or circumstances.

1.4 APPLICATION

1.4.1 This by-law is applicable to all property within the boundaries of the City of Thorold.

1.5 EXEMPTION

1.5.1 The *erection* of an *acoustical barrier* shall be exempt from the provisions of this by-law provided it is *erected* under approval or requirement of an Engineering agreement or similar agreement, or as a local improvement.

1.5.2 Save and except the requirements of subsection 2.4 of this by-law, the *persons* listed below shall be exempt from the remaining provisions of this by-law

- (1) the Corporation of the City of Thorold
- (2) the Regional Municipality of Niagara
- (3) any provider of utility services (telecommunications, gas, electric or water)
- (4) the Seaway Authority
- (5) any Department or Ministry of the Federal or Provincial Government
- (6) the District School Board of Niagara
- (7) the Niagara Catholic District School Board

1.5.3 Any *fence* temporarily *erected* to protect any excavation, construction site, or any emergency or hazardous area shall be exempt from the provisions of this by-law.

1.5.4 Any *fence* or *privacy screen* constructed in accordance with an approved site plan agreement shall be exempt from the provisions of this by-law.

1.5.5 Any *fence erected*, constructed or maintained along any limit of a *highway* having a width of not less than 40.23 m [132 ft.] shall be exempt from the provisions of this by-law provided it is *erected*, constructed or maintained within the property operated as the *highway*.

SECTION 2 FENCES

2.1 GENERAL PROHIBITIONS

- 2.1.1 No *person* shall, without statutory authority so to do, *erect* or cause to be *erected*, any *fence* on any *lands* owned by the *City* or on any *highway* or road allowance.
- 2.1.2 Any *fence*, pole, post, pillar or wire or other construction *erected*, constructed or maintained contrary to the provisions of article 2.1.1 of this by-law, shall be removed by the person upon whom notice is served within two (2) weeks after receipt of notice, in writing, served upon the owner or occupier of the adjoining premises by registered mail and in the event of non-compliance with such notice the *Chief Building Official* may cause the same to be removed at expense of the said owner or occupier and such expense shall be a debt due by such owner or occupier to the *City* and the same may be recovered in like manner to municipal taxes.
- 2.1.3 Any *fence* enclosing an outdoor swimming pool shall be subject to the requirements of the *City of Thorold Pool By-law*, as amended, and where this by-law conflicts with the *Pool By-law*, the most restrictive of the two shall apply.
- 2.1.4 No *person* shall *erect* or cause to be *erected* any *fence*, *hedge* or *privacy screen* which is prohibited by the provisions of this by-law.
- 2.1.5 No *person* shall *erect* or cause to be *erected* any *fence*, *hedge* or *privacy screen* in any residential zone which is constructed in whole or in part of sheet metal or corrugated metal panel members.
- 2.1.6 No *person* shall *erect*, or cause to be *erected*, or keep in any *yard*, or on any *land* within the *City*, a *fence*, *hedge* or *privacy screen* which is not in a good state of repair and is not in accordance with the provisions of the *City of Thorold Property Standards By-law*, as amended.
- 2.1.7 Where a *lot line* is shared between a non-residential zone and a *residential zone*, the provisions of this by-law regarding *fences* in *residential zones* shall prevail.
- 2.1.8 No *person* shall hinder or obstruct an *Officer*, appointed under this by-law or employed to enforce by-laws for the *City of Thorold*, from carrying out an inspection of land.
- 2.1.9 In respect of any *fence* which has been *erected* using, in whole or in part, any material or materials which are prohibited by this subsection, and which is in existence as of the date of enactment of this by-law, or which may come into existence at any later date, the *owner* of the *property* upon which the *fence* is situated shall remove such *fence* within ninety (90) days from the date of receiving a notice from the municipality to do so.

2.2 HEIGHT AND LOCATION

- 2.2.1 No *person* shall *erect* or cause to be *erected* on any *lot* in the following *zones*, a *fence* which is greater than the stipulated height above *ground level*:
- | | |
|--|---------------------|
| (1) <i>residential zone</i> | 2m [6.5 ft.] high |
| (2) <i>institutional zone, commercial zone</i> | 2.4m [8 ft.] high |
| (3) <i>industrial zone</i> | 3.0m [9.8 ft.] high |

- 2.2.2 The provisions of article 2.2.1 do not apply to a *person* who *erects* or causes to be *erected* a *hedge*, provided that the *hedge* does not exceed 3m [9.8 ft.] in height above *ground level*.
- 2.2.3 The provisions of article 2.2.1 do not apply to a *person* who *erects* or causes to be *erected* a privately owned outdoor tennis court, provided it is a *fence of open construction*.

2.3 FENCES IN FRONT YARDS

- 2.3.1 Notwithstanding the provisions of subsection 2.2, no *person* shall *erect* or cause to be *erected* within 4.5m [14.75 ft.] of the nearest *street line* in a *front yard*;
- (1) a *fence of closed construction* or a *hedge* which is greater than 0.9m [3 ft.] in height above *ground level*, or
- (2) a *fence of open construction* which is greater than 1.2m [4 ft.] in height above *ground level*.
- 2.3.2 The provisions of article 2.3.1 do not apply to the *erection* of an ornamental gateway, entranceway or similar structure.
- 2.3.3 The provisions of article 2.3.1 do not apply to the *erection* of a *fence* on any *land* in an *industrial zone* provided it is a *fence of open construction*.
- 2.3.4 Where a building or a part of a building is closer to the *street line* than 4.5m [14.75 ft.], the nearest distance shall prevail.

2.4 FENCES IN SIGHT TRIANGLES

- 2.4.1 No *person* shall *erect* or cause to be *erected*, in any *yard* or on any *land*, a *fence* within a *sight triangle* unless such a *fence* is a *fence of open construction* and does not obstruct the visibility through the *sight triangle*, and the height of the *fence* does not exceed 0.9m [3 ft.] above *ground level*.

2.5 DIVISION FENCES

- 2.5.1 Each of the owners of adjoining occupied land shall repair, replace or maintain a just proportion of any division fence heretofore or hereafter erected which marks the boundary of their respective properties, or shall bear a just proportion of the cost of any work or erection, repair, replacement or maintenance which has been carried out.
- 2.5.2 Where owners of adjoining land cannot agree on the type or kind of fence to be erected between them as provided by article 2.5.1 of this by-law, no contribution to the cost thereof shall be payable unless the party erecting the fence constructs a chain link fence 1.22m [4 ft.] in height. Only upon such fence being constructed shall the provisions of article 2.5.1 of this by-law apply respecting the apportionment of costs of the said fence. In the event any other type or kind of fence is erected, there shall be no apportionment of costs with respect thereto but where repair or maintenance is carried out under this by-law, a just proportion of the cost of the work may be recovered under article 2.5.3 of this by-law.

- 2.5.3 An owner desiring to enforce the provisions of article 2.5.1 and 2.5.2 of this by-law shall deliver to the owner or occupant of the adjoining land a notice by registered mail requiring him to comply with the by-law and if such compliance does not take place within thirty (30) days after service of the notice, the owner serving the notice, may do the work that the by-law authorizes and may, pursuant to the Provincial Offences Act, take the proceedings to recover the value of the work and the cost, from the said adjoining owner or occupant.

2.6 ELECTRIC FENCES

- 2.6.1 No *person* shall *erect* or cause to be *erected* an *electric fence*.
- 2.6.2 Notwithstanding the provisions of article 2.6.1, an *electric fence* using direct current may be *erected* on *land* while it is being lawfully used for an *agricultural operation*, provided such fence:
- (1) has a maximum 12 volt trickle charge;
 - (2) is designed and *erected* solely to contain animals; and
 - (3) has attached thereto at intervals not to exceed 15m [49.2 ft.], a sign warning that the *fence* carries electricity.

2.7 BARBED WIRE

- 2.7.1 No *person* shall *erect* or cause to be *erected* or maintained any *fence* composed wholly or partially of barbed wire, metal spikes or other sharp or pointed materials, within the *City* of Thorold provided, however, that barbed wire, metal spikes or any other sharp or pointed material may be used on *land* while it is being lawfully used for an *agricultural operation*.
- 2.7.2 No *person* shall *erect* or cause to be *erected* or maintained any *fence* composed wholly or partially of barbed wire, metal spikes or other sharp or pointed materials on any *lands* located in a *Residential Zone*.
- 2.7.3 Notwithstanding the provisions of article 2.7.1, a *fence* containing barbed wire is permitted to be *erected* in an *industrial zone* provided that the portion of fence containing barbed wire is greater than 1.8m [6 ft.] above *ground level*.

2.8 USED VEHICLE TIRES

- 2.8.1 No *person* shall *erect* or cause to be *erected* any *fence* composed wholly or partially of used vehicle tires on any *property* within the *City* of Thorold.
- 2.8.2 No *person* shall maintain or keep, cause to be maintained or kept, any *fence* composed wholly or partially of used vehicle tires on any *property* within the *City* of Thorold.

SECTION 3 PRIVACY SCREENS

3.1 GENERAL PROHIBITIONS

- 3.1.1 No *person* shall *erect* or cause to be *erected*, any *privacy screen* on any *lands* owned by the *City* or on any *highway* or road allowance without having entered into an encroachment agreement with the *City*.

- 3.1.2 In respect of any *privacy screen* which has been *erected* using, in whole or in part, any material or materials which are prohibited by this subsection, and which is in existence as of the date of enactment of this by-law, or which may come into existence at any later date, the *owner* of the *property* upon which the *privacy screen* is situated shall remove such *privacy screen* within ninety (90) days from the date of receiving a notice from the municipality to do so.

3.2 HEIGHT

- 3.2.1 No *person* shall *erect* or cause to be *erected* on any *yard* or on any *land*, a *privacy screen* which is greater than 3m [9.8 ft.] above *ground level*.

3.3 PRIVACY SCREENS IN FRONT YARDS

- 3.3.1 No *person* shall *erect* or cause to be *erected* a *privacy screen* in a *front yard*.

3.4 PRIVACY SCREENS IN SIDE AND REAR YARDS

- 3.4.1 No *person* shall *erect* or cause to be *erected* a *privacy screen* in any *side yard* or *rear yard* which is:
- (1) less than 4.5m [14.75 ft.] from any *street line*;
 - (2) less than 1.2m [4 ft.] from the *rear lot line*; and
 - (3) less than 1.2m [4 ft.] from any *interior side lot line*, provided however, that where the *privacy screen* is located so as to provide a visual barrier between dwelling units divided by a common wall, a *privacy screen* may be placed closer to the common *interior side lot line*.

3.5 PRIVACY SCREENS IN SIGHT TRIANGLES

- 3.5.1 No *person* shall *erect* or cause to be *erected*, in any *yard* or on any *land*, a *privacy screen* within a *sight triangle*.

3.6 USED VEHICLE TIRES

- 3.6.1 No *person* shall *erect* or cause to be *erected* any *privacy screen* composed wholly or partially of used vehicle tires on any *property* within the City of Thorold.
- 3.6.2 No *person* shall maintain or keep, cause to be maintained or kept, any *privacy screen* composed wholly or partially of used vehicle tires on any *property* within the City of Thorold.

SECTION 4 ADMINISTRATION AND ENFORCEMENT

4.1 LINE FENCES ACT

- 4.1.1 From and after the coming into effect of this by-law, the Line Fences Act shall no longer apply in the City of Thorold.

4.2 ENFORCEMENT

- 4.2.1 The *Chief Building Official* or an *Officer* may inspect the *land* or structures, for the purpose of determining whether there is compliance with any provision of this by-law.
- 4.2.2 Every *owner* or occupant shall permit the *Chief Building Official* or an *Officer* employed, upon production of identification and for the purpose of the inspection by the *City*, to inspect the *land* or structure for the purpose of article 4.1.1.

4.3 PENALTIES

- 4.3.1 Every *person* who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to fines as provided for in the *Provincial Offences Act, R.S.O. 1990, c. P.33*, as amended.

4.4 VALIDITY

- 4.4.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law so as to protect the public.
- 4.4.2 Where a provision of this by-law conflicts with the provision of another by-law, Act, or Regulation in force within the City of Thorold, the provisions that establish the higher standards to protect the health and safety of *persons* shall prevail.

SECTION 5 ENACTMENT

5.1 DATE OF ENACTMENT

- 5.1.1 This by-law shall come into force and effect on the day after it is passed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED BY COUNCIL THIS 15TH DAY OF APRIL, 2008.

Henry D'Angela, Mayor

John K. Bice, City Clerk