



## THE CORPORATION OF TOWNSHIP OF SOUTHWOLD

### BY-LAW NO. 2019-77

#### Being a By-law to Regulate the Height, Location and Description of Fences on Private Property by the Corporation of the Township of Southwold

**WHEREAS** subsection 5(3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

**AND WHEREAS** Sections 8, 11, and 15(4) of the Municipal Act, S.O. 2001, c. 25, as amended, authorizes municipalities to pass by-laws respecting fences which includes the authority to prescribe the height and description of fences on all properties and to require owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools;

**AND WHEREAS** paragraph 7 of subsection 11(3) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting structures, including fences and signs;

**AND WHEREAS** Section 98 of the Municipal Act, 2001 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 Settlement Areas as defined in the Township's Official Plan from the provisions of the Line Fences Act, R.S.O. 1990, c.L.17, as amended;

**NOW THEREFORE**, the Council of The Corporation of the Township of Southwold enacts as follows;

**SHORT TITLE**, this By-law and Amendments, may be cited as the "Fence By-Law"

#### Part I General

- 1.01** In this By-law, the word "shall" is mandatory and not discretionary, words in the plural include the single number and words in the present tense include the future tense.
- 1.02** The provisions of this By-law shall apply to all properties within the boundaries of the Corporation of the Township of Southwold. The Line Fences Act shall not be

applicable within Settlement Areas, as defined in the Township's Official Plan, but will continue to apply in non-Settlement areas.

- 1.03** No property within the Township of Southwold shall be used and no building or structure shall be erected, altered, enlarged, maintained or used for any purpose except in conformity with the provisions of this By-law.

## **Part II Definitions**

In this By-law:

- 2.01** Building – means a structure occupying an area greater than 10 square meters consisting of a combination of walls, roof and floor, or a structural system serving the function thereof, including all associated works, fixtures and service systems.
- 2.02** By-law Enforcement Officer - shall mean a By-law Enforcement Officer appointed by the Township of Southwold or designate.
- 2.03** Chief Building Official - means the Officer or employee appointed by By-law of the Township of Southwold charged with the duty of enforcing the provision of the Building By-law, Building Code Act and its applicable regulations.
- 2.04** Corner Lot - means a lot bounded by two intersecting streets, the angle of intersection of which is not more than 135 degrees. In the case of a curved street, such angles shall be formed by their tangents drawn from the points where the interior lot lines meet the street line.
- 2.05** Daylight Corner or Sight Triangle - means the triangular space formed by the street lines of a corner lot where such lot is located at the intersection of two or more streets and a line drawn from a point in one street line to a point in the other street line, each such point being six meters from the point of intersection of the street lines measured along the said street lines, and where the two street lines do not intersect at a point; the point of intersection of the street lines shall be deemed to be the intersection of the projected tangents of the street lines drawn through the extremities of the interior lot lines.
- 2.06** Driveway Visibility Triangle - means the triangular space formed by joining the point on a property line and the driveway established by measuring 4.5 meters in each direction along the property line abutting a street and along a driveway from the point where said property line and driveway intersect.
- 2.07** Dwelling - means a building containing one or more dwelling units but does not include a trailer or mobile home.
- 2.08** Exterior Side Yard - means a side yard immediately adjacent to a street, other than the front lot line.
- 2.09** Farm Fence - means a fence erected for the purpose of containing livestock, enclosing crops, water areas, woodlots, buildings, fields or laneways as part of an agricultural operation on an Agricultural or Open Space property defined by The Township Zoning By-law.

- 2.10** Fence - means a structure, except a structural part of a building, used to wholly or partially screen from view, enclose or divide a yard or other land, or mark or substantially mark the boundary between adjoining land, and includes any hedge or grouping of shrubs used for the same purpose in a front yard, corner visibility triangle, or driveway visibility triangle.
- 2.11** Front Yard - means a yard extending across the full width of a lot between the front lot line and the nearest main wall of any main building or structure on the lot.
- 2.12** Gate - shall include a door or other device constructed that may be opened to gain access to an area enclosed by a fence.
- 2.13** Height - means the vertical distance from the base of the fence at grade to the top of the fence including fence posts.
- 2.14** Interior Side Yard - means any side yard other than an exterior side yard.
- 2.15** Owner- shall include any person who has lawful possession of any lands or premises.
- 2.16** Permit - shall mean a permit issued by the Chief Building Official certifying approval of plans for swimming pool fences.
- 2.17** Pool fence - shall mean any fence that encloses in whole or in part, a swimming pool, and includes any temporary enclosure erected during the construction of any swimming pool, includes a gate attached to the fence but does not include the side wall of the pool.
- 2.18** Privately Owned Outdoor Swimming Pool - means any body of water located outdoors on, above, or below privately-owned property contained by artificial means and used or maintained for the purpose of swimming, wading, diving, or bathing and which has a design depth of 0.91m or greater.
- 2.19** Rear Yard - means a yard extending across the full width of a lot between the rear lot line and nearest main wall of any main building or structure on the lot.
- 2.20** Temporary Enclosure - shall mean a device that is intended to temporarily perform the functions of a fence and is subject to the approval of the Chief Building Official.
- 2.21** Township - means the Corporation of the Township of Southwold.

**Part III  
General Provisions**

- 3.1** No fence shall:
  - a) be made of materials originally designed or manufactured for a primary purpose other than a fence such as, but not limited to, sheet metal, corrugated metal panels and garage door panels;

- b) be made of materials that are sharp or protruding such as, but not limited to, barbed wire, razor wire or any other similar material in the construction of any fence unless specifically permitted by this By-Law.
  - c) No person shall use, or cause to be used, electric current as a part of or in conjunction with any fence unless specifically permitted by this By-Law.
  - d) be located within 2.0m from a fire hydrant, except that a fence may be located no closer than 1.0m from the rear of a fire hydrant as viewed from the centre of a municipal road allowance;
  - e) exceed 2.13m in height within an exterior side yard, side yard, or rear yard;
  - f) be erected in such a manner as to obstruct visibility to drivers or pedestrians entering, exiting, crossing or approaching a driveway, roadway, laneway or walkway;
  - g) 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 2.59m wide giving access to such parking space.
- 3.2** Every fence shall have a surface that is painted, stained, varnished or protected with a similar protective finish, unless the material itself possess characteristics that offer protection against deterioration, such as, but not limited to, cedar, vinyl, or galvanized chain link.
- 3.3** Snow fencing and plastic mesh fencing shall not be used as a permanent fence.
- 3.4** A fence constructed on top of a building or structure as defined in The Zoning By-law, including decks, terraces, landing, and steps more than 0.6m above finished ground level, shall be exempt from the provisions of this by-law with respect to height and location, but shall comply with regulations for height and location within the applicable zoning category in The Zoning By-law.
- 3.5** Notwithstanding Section 3.1 archways forming part of an entrance may exceed the height restrictions to a maximum of 2.4 meters.
- 3.6** A boundary fence in side yards or rear yards may be 2.4 meters in height provided any portion of the fence over 2.13 meters is of open type, decorative construction.
- 3.7** Except for fences described in Section VI of this by-law to enclose a pool, fences may be erected without a permit, but shall comply with this by-law.

**Part IV**  
**General Provisions**  
**Commercial/Industrial/institutional Zones**

- 4.1** Unless permitted by a site plan agreement or any other development agreement executed by the Town, a fence on any property zoned Commercial, Industrial or Institutional shall not exceed 2.44 m in height.

- 4.2 Barbed wire may be placed on the top of a fence on any property zoned Commercial, Industrial or Institutional that does not abut a residential zone, provided that the said fence is a minimum of 1.83 m in height.
- 4.3 Notwithstanding Section 4.2 barbed wire may be used in the construction of a fence on any property zoned Commercial, Industrial or Institutional and required for the provision of infrastructure for any public utility regardless of location.

**Part V**  
**General Provisions**  
**Agricultural Fences**

- 5.1 Properties in an Agricultural zone containing a residential use with a lot area of less than 6000 square meters and abutting other similar lots shall comply with Part III of this By-law.
- 5.2 Barbed wire may be used in the construction of a fence on any property zoned Agricultural and required for the provision of infrastructure for any public utility regardless of location.
- 5.3 Nothing in Section III of this By-law shall apply to the construction of a fence to contain livestock on a lot larger than 2750 square metres.
- 5.4 A livestock fence shall be built in good farming practice and building practice at the discretion of the CBO or designate and shall be constructed to properly house the livestock it was intended to contain.
- 5.5 a) no person shall maintain or permit to be maintained a fence equipped to transmit an electric current, except for a fence on a farm for the keeping of livestock or the protection of livestock or crops from animals provided that the fence meets the requirements of any applicable Canadian Standards Association Standard.
- b) has attached thereto, at approximate 30.48 m intervals, a sign warning that the fence carries electricity.

**Part VI**  
**Swimming Pool Fences**

- 6.1 No privately-owned outdoor swimming pool shall be constructed, used, or maintained unless a permit for said pool has been issued by the Chief Building Official.
- 6.2 Every person, in making an application for a permit to construct, use, or maintain a pool shall file with the Chief Building Official materials required by the Building By-law including plans identifying all fences and gates as required by this by-law.
- 6.3 No person shall place water in a pool or allow water to remain there unless the fences and gates prescribed by this by-law have been erected to the satisfaction of the Township.

- 6.4** No pool shall be constructed, used, or maintained unless a fence is erected and maintained around such pool. Such fence shall be a minimum distance of 1.2m from the edge of pool. Such fence shall be a minimum height of 1.2m and shall have a gate or gates equipped with a lock or locks.
- 6.5** No gate shall be left unlocked unless a responsible adult is present and supervising the pool.
- 6.6** Every gate or gates required in Section 6.4 of this by-law shall be equipped with a self-closing and latching device.
- 6.7** Every fence required by this by-law shall be constructed so that all exterior members are vertical or that the fence shall be chain link with a size of 5.0cm link or less.
- 6.8** No pool wall shall be used in whole or as a portion of a pool fence.
- 6.9** Notwithstanding any other provisions of this by-law, a structure known as a "hot tub" or "swim spa" shall be exempt from the provisions of this Section provided that the structure is adequately secured by a cover equipped with a locking device and which cover shall be kept locked in place over the hot tub or swim spa when the hot tub or swim spa is not in use.
- 6.10** For the purposes of Section 6.9, a cover shall comply with American Society for Testing Materials (ASTM) Standard F1346, clauses 9.1, 9.2, and 9.4, or other standard, to the satisfaction of the Chief Building Official, that demonstrates that the cover will inhibit access unless a responsible adult is present and supervising the hot tub or swim spa.
- 6.11** Once a swimming pool is filled with water, it must be fenced. A temporary enclosure is permitted in lieu of a swimming pool fence but must be replaced with a permanent fence in accordance with Section 6.4, 6.5 and 6.6 within 30 (thirty) days of the pool being filled with water.

## **Part VII Height Calculations**

- 7.1** The height of a fence at any given point shall be measured from the grade at the base of the fence 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 2.44m portion.
- 7.2** Where grade elevations of adjacent lots differ, the height of any boundary fence shall be measured from the mean grade elevation between the lots.

**Part VIII  
Sight and Visibility Triangles**

- 8.1** No fence or hedge shall exceed 0.76m in height within a front yard, corner visibility triangle, or driveway visibility triangle, except on a commercial, industrial, or institutional property as defined by The Zoning By-law where a fence within a front yard shall not exceed 1.98m.

**Part IX  
Variances**

- 9.1** Any person, being the occupier or owner of land in the Township, may apply to the Chief Building Official for permission to exceed any of the requirements set out in this By-Law, and if the Chief Building Official is satisfied that the proposed application is reasonable and does not contravene the purpose and intent of the provisions of this by-law, then the Chief Building Official may grant such permission, in whole or in part, conditionally or unconditionally, as deemed advisable.

**Part X  
Penalty**

- 10.1** Every person who contravenes any provisions of this By-law is guilty of an offence and is liable, upon conviction, to a fine not exceeding Five Thousand Dollars (\$5,000) exclusive of costs, for each offence, recoverable under the Provincial Offences Act, R.S.O. 1990, Chapter P.33. Fines and penalties are included in Schedule A attached hereto and forming a part of this By-Law.
- 10.2** Where anything required to be done in accordance with this By-Law is not done, the Township or a person or persons designated by the Township may carry out such work or take such action and recover the costs of so doing by adding the costs to the tax roll for the property on which the work was done or the actions were taken and collecting them in the same manner and with the same priority as municipal taxes.

**Part XI  
Exemptions**

- 11.1** 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 Township By-Laws, the proof of which shall lie with the owner of the property on which the fence is constructed, 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.

**Part XII  
Severability**

- 12.1 Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the said section shall not affect the validity of this by-law as a whole or any part thereof, other than the part so declared to be invalid.

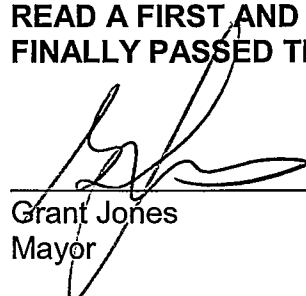
**Part XIII  
Repeal**

- 13.1 Township of Southwold By-Law 77-14 is hereby repealed.

**Part XIV  
Date By-Law Comes into Force**

- 14.1 This by-law shall be deemed to have come into force and take effect on the date of the final passing thereof.

**READ A FIRST AND SECOND TIME, CONSIDERED READ A THIRD TIME AND  
FINALLY PASSED THIS 13<sup>TH</sup> DAY OF JANUARY, 2020.**

  
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Grant Jones  
Mayor

  
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Katherine Thompson  
Clerk



**SCHEDULE 'A'**

**THE CORPORATION OF THE TOWNSHIP OF SOUTHWOLD**

**BY-LAW NO. 2019-77**

**PART I PROVINCIAL OFFENCES ACT**

**TITLE: FENCE BY-LAW**

Column 1	Column 2	Column 3
Short Form Wording	Provision Creating or Defining Offence	Set Fine
Constructing or using a pool without permit	6.1	\$250.00
Placing Water in a Pool without the prescribed fence or gates	6.4	\$250.00
Using pool without the prescribed fence or gates	6.5	\$250.00
Using a hot tub or spa without prescribed cover	6.9	\$250.00

Note: the general penalty provision for the offences listed above is Section 10.1 of By-law 2019-77, a certified copy of which has been filed.