



# The Corporation of the Town of New Tecumseth

By-law 2007-100  
(Consolidated – as amended)

## FENCE BY-LAW

To prescribe the height and description of fences and to regulate fences around privately owned swimming pools in the Town of New Tecumseth.

Consolidation		
Amendment No. 3	By-law No. 2013-143	November 18, 2013
Amendment No. 2	By-law No. 2009-111	August 31, 2009
Amendment No. 1	By-law No. 2007-219	November 12, 2007

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E&OE

OFFICE CONSOLIDATION  
Current to Amendment No. 2  
By-law No. 2009-111, August 31, 2009

THE CORPORATION OF THE TOWN OF  
NEW TECUMSETH  
**BY-LAW**  
Number 2007-100

"FENCE BY-LAW"

To prescribe the height and description of fences and to regulate fences around privately owned swimming pools in the Town of New Tecumseth

**WHEREAS** Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25 ("the Municipal Act, 2001"), as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

**AND WHEREAS** Section 9 of the Municipal Act, 2001, provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

**AND WHEREAS** Section 11 of the Municipal Act, 2001, provides that a lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction described in the Municipal Act, 2001 and subject to certain provisions as outlined in the Municipal Act, 2001;

**AND WHEREAS;** the Town of New Tecumseth is desirous of enacting a Fence By-law;

**NOW THEREFORE** the Council of the Corporation of the Town of New Tecumseth enacts as follows:

**1. DEFINITIONS**

In this By-law:

- 1.1. Construct a Fence means to construct, erect, build, install, alter, reconstruct or replace a fence, or cause or permit another person to do so, and "construct a pool fence" has a corresponding meaning.
- 1.2. Construct a Pool means to excavate for, construct, build, erect, or replace a pool, or to cause or permit another person to excavate for, construct, build, replace or erect a pool.
- 1.3. Designated Official means a By-law Enforcement Officer or Chief Building Official for the Town of New Tecumseth, or as otherwise determined by the Town.
- 1.4. Division Fence means a fence marking the boundary between abutting parcels of land.
- 1.5. Enclosure means a fence, wall or other structure, including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto.
- 1.6. Farm fence means a fence erected for the purpose of containing livestock, enclosing crops, water areas (excluding private swimming pools), woodlots, buildings, fields or laneways for the operation of agriculture.
- 1.7. Fence means a barrier or partition erected or grown, including shrubs and hedges, which may or may not define the boundary line of a property but shall not include a building or structure as defined in the Ontario Building Code Act or Regulations for the Town of New Tecumseth Zoning By-law. In the case of an outdoor swimming pool, a fence may include buildings or structures, but shall not include shrubs and hedges.
- 1.8. Fence of Open Construction means a fence constructed so that at least one third (1/3) of its vertical surface area is open space, enabling motorists and pedestrians to have a clear view through such fence.

- 1.9. Height means the vertical distance measured between the average finished grade and the highest point of the fence. In the case of a fence located on top of a retaining wall or berm, height means the combined vertical distance between the lowest point of the retaining wall or berm and the highest point of the fence. In the case of a fence surrounding a privately owned outdoor swimming pool, the height shall be measured at the outside of the fence which separates the pool from the remainder of the land.
- 1.9a Hot Tub means a hot tub or whirlpool or spa.
- 1.10. Lot means all contiguous land under one ownership.
- 1.11. Lot, Through means a lot which has street access on 2 or more streetlines, other than a corner lot.
- 1.12. Lot, Corner means a lot situated at the intersection of two or more streets, or a lot abutting on one or more parts of the same street, where such intersections have an angle of intersection of 135 degrees or less or located on the curve of a street where the angle of intersection of the projected tangents of the streetline does not exceed 135 degrees.
- 1.13. Lot Line means any boundary of a lot and the vertical projection thereof.
- 1.14. Lot Line, Front means the lot line that abuts the street except that :
- a) in the case of a corner lot or through lot, the shorter lot line abutting a street shall be deemed the front lot line.
  - b) in the case of corner or through lots, with two lot lines of equal length abutting streets, the lot line that abuts the wider street shall be deemed to be the front lot line. Where the streets are of equal width, the lot line which abuts a County or Provincial Highway shall be deemed to be the front lot line. In the case of both streets being under the same jurisdiction and of the same width, the Town shall designate which street line shall be the front lot line.
- 1.15. Lot Line, Rear means the lot line opposite to the front lot line except where the side lot lines intersect, as in the case of a triangular lot, in which case the rear lot line shall be represented by the point of intersection of the side lot lines
- 1.16. Owner means an owner, lessee, tenant, mortgagee in possession and the person in charge of any property.
- 1.17. Person shall include a Firm Partnership, Company, Corporation, or Contractor of Owner.
- 1.18. Public Highway means a street or highway being a Provincial highway or under the jurisdiction of the County of Simcoe or the Town of New Tecumseth, or assumed by the municipality or being constructed under an Agreement with the Town.
- 1.19. Shrubs and Hedges mean a continuous line of plantings or plant material arranged to form a fence or boundary.
- 1.20. Sight Triangle means an area free of buildings or structures higher than 0.6 metres (2 feet) which is determined by measuring from the point of intersection of streetlines on a corner lot to a prescribed distance or by measuring from the point of intersection of any streetline and driveway to a prescribed distance.
- 1.21. Structure means anything constructed or erected which requires location on or in the ground or is attached to something having location on or in the ground but shall not include a fence, a retaining wall less than 0.6 metres (2 feet) in height, lawn ornament or a shrub or hedge.
- 1.22. Swimming Pool means a privately-owned outdoor body of water contained in part or in whole by artificial means, which holds water in excess of 0.5 metres (2 feet) and is designed or intended for the use of swimming, bathing, diving or wading, but does not include a pond or reservoir to be utilized for farming purposes, landscaping ponds and public swimming pools as defined by the Ontario Building Code.
- 1.23. Town means the Council of the Town of New Tecumseth.

- 1.24. Yard means an uncovered space on a lot lying between the lot line and the nearest part of any building or structure on the lot.
- 1.25. Yard, Exterior Side means a side yard immediately adjacent to a street or a reserve abutting a street, extending from the front yard to the rear yard of any lot.
- 1.26. Yard, Front means a yard extending across the full width of the lot between the Front Lot Line of the lot and the nearest part of the nearest building or structure on the lot.
- 1.27. Yard, Interior Side means the yard between the side lot line and the nearest part of any building or structure extending from the front yard to the rear yard of a lot.
- 1.28. Yard, Rear means the yard extending across the full width of the lot between the rear lot line of the lot and the nearest part of the nearest building or structure on the lot.
- 1.29. Yard, Side means the yard between the side lot line and the nearest part of any building or structure extending from the front yard to the rear yard of a lot.
- 1.30. Zone means a zone category in a By-law enacted pursuant to Section 34 of the Planning Act, as amended, or a predecessor of that Section.

## **2. RESTRICTIONS ON FENCES**

- 2.1. No person shall use any barbed wire or other barbed material of a nature which could be injurious to the public in the construction of, or in connection with, any fence in the Town of New Tecumseth, except where such a fence is located within an industrial zone and provided that such materials are used at a height of at least 6 feet (1.8 metres) above the finished grade.
- 2.2. No person shall permit a fence or any attachment to a fence to be used as a conductor of an electrical current except where such fence is located within an agricultural zone.
- 2.3. No person shall erect a fence on or in any municipal easement unless the fence is constructed in accordance with the applicable easement document. Furthermore, the Town of New Tecumseth shall not be responsible for any damage to a fence during the course of regular or emergency maintenance within such easement.
- 2.4. No person shall construct a fence that contains a gate structure that abuts Town owned property without being granted an exemption by the Town.
- 2.5. No person shall construct a fence that is greater than 0.6 metres (2 feet) in height along any point of a Sight Triangle and such fence must be of open construction.
- 2.6. No fence shall be erected between two abutting dwellings where the distance between such dwellings is 0.6 metres (2 feet) or less.
- 2.7. No fence shall be erected closer than 0.3 metres (1 foot) from any lot boundary abutting a street.
- 2.8.1 Notwithstanding the provisions of section 2.1, the maximum height of any fence shall be 6 feet (1.8m) in any zone unless specified in section 4 of this By-law.

## **3. FENCES IN RESIDENTIAL ZONES**

For any residential use in the Town of New Tecumseth, the following shall apply:

- 3.1. Fences in Rear Yards  
No fence erected in a rear yard shall exceed 1.8 metres (6 feet) in height.
- 3.2. Fences in Front Yards  
No fence erected in a front yard shall exceed 1.0 metres (3.3 feet) in height and shall be constructed as a fence of open construction.

3.3. Fences in Interior Side Yards

3.3.1 No fence erected in an interior side yard shall exceed 1.8 metres (6 feet) in height.

3.3.2 Notwithstanding Section 3.2, if the fence is a division fence, the subject fence may be erected to a point opposite the front corner of the building nearer the road.

3.4. Fences in Exterior Side Yards

3.4.1 No fences erected in an exterior side yard shall exceed 1.0 metres (3.3 feet) in height.

3.4.2 Notwithstanding Section 3.4.1, if the residence is set back further than the minimum setback required by the current Zoning By-law, then a fence not exceeding 1.8 metres (6 feet) may be constructed if such fence meets minimum setbacks as required by the current Zoning By-law.

3.5. Fences in Through Lots

A fence having a maximum height of 1.8 metres (6 feet) may be erected along the side lot lines. A fence may not be closer than 7.5 metres (25 feet) to the front or rear lot line. However, it may extend to the dwelling if the dwelling is within this setback.

**4. FENCES IN COMMERCIAL, INDUSTRIAL, INSTITUTIONAL AND OPEN SPACE ZONES**

In a commercial, industrial, institutional or open space zone, the following shall apply:

4.1. No fence shall exceed 3.04 metres (10 feet) in height.

4.2. No fence shall be erected having a height in excess of 1.8 metres (6 feet) from the exterior side lot line to the established building line of the main building erected on the lot.

4.3. No fence shall be erected having a height in excess of 1.2 metres (4 feet) between the established building line of the main building on the lot, and a setback of 3.04 metres (10 feet) from the front lot line.

4.4. A fence shall be of open construction.

**5. FENCES IN INDUSTRIAL EXTRACTIVE ZONE**

5.1 In an industrial extractive zone, a fence of heavy duty farm fencing with a minimum height of 1.2 metres (4 feet) and maximum height of 2.4 metres (8 feet) shall be erected and maintained around the entire site. Such fence shall follow the contours of the surface of the ground along the perimeter of the lot or area of the lot to be used for a pit operation.

**6. FENCES IN AGRICULTURAL AND RURAL ZONES**

6.1 Notwithstanding the provisions of this by-law, nothing shall prevent the construction and maintenance of farm fences in areas zoned Agricultural or Open Space by the applicable zoning by-law. In addition, nothing shall prevent the use of barbed wire or electric farm fencing within an agricultural zone.

**7. FENCES AROUND SWIMMING POOLS**

7.1 ENCLOSURES

7.1.1 No person shall construct a Swimming Pool or erect a fence around same without first acquiring the necessary permit or permits from the Municipality. The application for a permit shall be on the prescribed form of the Municipality and shall include a plot plan satisfactory to the Designated Official.

- 7.1.2 No person shall have a Swimming Pool in the Town unless the area is completely enclosed by fencing in compliance with the following requirements:
- 7.1.2.1 Such fencing, including gates therein shall extend from the ground to the height of not less than 1.2 metres (4 feet) and shall fulfill the intent of prohibiting unauthorized trespass into the Swimming Pool area.
- 7.1.2.2 Have no rails or other horizontal or diagonal bracing or attachments on the outside face that may facilitate climbing; between 10 millimetres (4 inches) and 1.5 metres (5 feet) from grade.
- 7.1.2.3 Chain Link - A fence of Chain Link construction shall comprise the following:
- i) A mesh not greater than 38 millimetres (1 and ½ inches) consisting of 12 gauge galvanized steel wire, or of 14 gauge steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 gauge wire.
  - ii) Galvanized steel supporting posts spaced at maximum 3.0 metres (10 feet) intervals, and extended at least 1.2 metres (4 feet) below grade.
  - iii) End posts and corner posts of minimum 48 millimetres (1 and 7/8 inches) diameter encased in concrete at least 50 millimetres (2 inches) thick all around below grade.
  - iv) Intermediate posts of minimum 38 millimetres (1 and ½ inch) diameter encased in concrete at least 50 millimetres (2 inches) thick all around below grade when more than 15 metres (50 feet) from an end post, a corner post or an intermediate post that is similarly encased.
- 7.1.2.4 Vertical Board - A fence of vertical board construction shall:
- i) Have vertical boarding 25 millimetres (1 inch) thick nominal attached to a top and bottom rail in such a manner as to not facilitate climbing from the outside. Such vertical boards must not be less than 23 millimetres x 100 millimetres (1 inch x 4 inches) nominal and must be spaced not more than 100 millimetres (4 inches) apart.
  - ii) Be supported by posts at least 100 millimetres x 100 millimetres (4 inches x 4 inches) nominal, spaced not more than 2.4 metres (8 feet) apart. Such posts shall extend at least 1.2 metres (4 feet) into the ground and be securely embedded therein. The portion below grade shall be treated with an approved wood preservative or be of pressure treated wood.
  - iii) Have top and bottom rails of at least 50 millimetres x 100 millimetres (2 inches x 4 inches) nominal dimensions.
  - iv) Have no openings that would allow the passage of a spherical object having a diameter larger than 100 millimetres (4 inches).
- 7.1.2.5 Other Types - Other types of fences including retaining walls, building walls on deck guards to serve as pool fences shall be constructed in accordance with the requirements of the Designated Official and shall have no opening greater than 50 millimetres (2 inches).
- 7.1.2.6 Temporary Fence - A temporary fence, where permitted by the Designated Official, shall consist of 1.2 metres (4 feet) high plastic mesh fence having a mesh not greater than 38 millimetres (1.5 inches), with a steel T-bar post every 3 metres (10 feet) maximum and a 9 gauge galvanized steel wire located at the top and bottom of such fence. A temporary fence shall be permitted during construction of a pool and shall be replaced prior to the pool being used.
- 7.1.2.7 Shall have no part consisting of barbed wire or have no similar dangerous characteristics such as a device for projecting electric current through the fence.
- 7.1.2.8 No pool fence shall be located closer than 1.2 metres (4 feet) to any condition that facilitates the climbing of the enclosure, unless alternative measures are implemented to provide an equivalent level of safety as set out in this By-Law.

- 7.1.2.9 A wall or walls of a building or buildings may form part of such fence provided that all doors affording access from a building directly to an enclosed Swimming Pool area, other than doors located in a dwelling unit, are equipped with a self closing device and self-latching device located not less than 1.2 metres (4.4 feet) above the bottom of the door.
- 7.1.2.10 A fence erected on the owner's property which complies with the provisions of this By-Law shall be deemed a sufficient fence, if it completely fences in the area in which the Swimming Pool is located, but in no case shall the fence be closer to the nearest inside wetted surface of the swimming pool wall than 1.2 metres (4 feet).
- 7.1.2.11 HOT TUBS – Outdoor hot tubs need not be enclosed by a fence provided they are enclosed by a solid, locked cover that is secured over the entire water surface when the area surrounding the hot tub is unattended by a supervisory adult.

## 7.2 SECURITY

- 7.2.1 Gates shall be of the same construction and height to that required for the fence.
- 7.2.2 Gates shall be supported on substantial hinges.
- 7.2.3 Gates shall be equipped with self-closing and self-latching devices placed at the top and on the pool side of the gate or equipped with a lock.
- 7.2.4 The Swimming Pool area must be secured at all times except when actually used by the owner, his family or persons authorized by the owner to use the pool.
- 7.2.5 The owner of every pool shall ensure that every gate or door providing access to such swimming pool be kept locked at all times when a responsible person is not present and supervising the pool.

## 8. CONSTRUCTION AND MAINTENANCE

- 8.1 All fences shall be maintained in good repair.
- 8.2 All fences shall be constructed and maintained in a structurally sound condition.
- 8.3 All fences shall be maintained to prevent an unsafe or unsightly condition.
- 8.4 Where fifty percent (50%) or more of any fence is to be replaced or repaired, such replacement and or repairs shall meet the requirements of this By-Law.
- 8.5 Where a lot line is indicated as following a zone boundary, the fence that may be erected shall be constructed to the specifications of the zone with the highest maximum height restrictions. Where the zone boundary is located on a street line, this subsection shall not apply.

## 9. VARIANCES

- 9.1 Notwithstanding the provisions of this by-law, nothing shall prevent the construction and maintenance of a fence constructed for public service purposes by the Town of New Tecumseth or any other government authority.
- 9.2 Notwithstanding any provisions respecting the height of fences in the by-law, where the Town has entered into a subdivision or site plan agreement requiring any fence to form part of a required architectural or noise attenuation feature, such fence shall be exempt from the height restrictions set out in the by-law for such fence and shall be the height set forth for such applicable subdivision or site plan control agreement.
- 9.3 The requirements of this by-law do not apply to a fence that was constructed lawfully prior to the day on which this by-law came into force.

- 9.4 The Town may, upon application by an owner of land, enact a resolution to grant an exemption from the height restrictions set out in this By-law except for fences around swimming pools which shall be a minimum of 1.2 metres (4 ft.) in height and for which no variance shall be considered.
- 9.5 Where a conflict exists between this by-law and any other zoning by-law, the provisions of this by-law shall prevail.

**10. FEES**

- 10.1 The fee for issuance of a permit under Section 7 of this By-law and the fee for an exemption of this By-law shall be paid in advance to the Town and shall be in accordance with the Town's applicable Fees and Charges By-law.
- 10.2 All fees, which are paid, are non-refundable.
- 10.3 A fee for issuance of a Permit shall require a \$200.00 security deposit and shall be returned to the applicant in full unless the applicant contravenes any provision of the By-law. The applicant shall notify the Designated Official within 6 months of the date of issuance of the permit for a final inspection to ensure full compliance to the by-law.
- 10.4 Failure to complete the notification for final inspection within the specified amount of time of 6 months will result in the forfeit of the full amount of the security deposit.

**11. ADMINISTRATION, ENFORCEMENT AND PENALTY PROVISIONS**

- 11.1. The administration and enforcement of the By-Law shall be under the authority of the Designated Official.
- 11.2. Every person or owner who contravenes any provision of this By-Law is, upon conviction in a court of competent jurisdiction, therefore guilty of an offence and shall be liable to a fine as provided under the Provincial Offences Act.
- 11.3. In this By-Law, where any person is directed to do any matter or thing, in default of it being done by the person directed or required to do it, such matter or thing may be done at his or her expense by the Town of New Tecumseth or its agents and such expense may be recovered by action or in like manner as Municipal taxes.

**12. REPEALS**

- 12.1 By-law 2002-113 is hereby repealed.

**13. TITLE**

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

**14. EFFECTIVE DATE**

- 14.1. This by-law shall come into force upon the date of its final passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 14<sup>TH</sup> DAY OF MAY, 2007.**

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MAYOR

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CLERK

*Office Consolidation*