

## **By-law No. 184-2022**

### **Corporation of the Municipality of Chatham-Kent**

#### **Being a By-law to prescribe the height, description and manner of building and maintaining fences**

**Whereas** Section 10(2) paragraph 10 of the Municipal Act, 2001 S.O. 2001, c.25, as amended, provides that a single tier municipality may pass bylaws respecting structures, including fences.

**And Whereas** it is deemed desirable to establish regulations concerning fences for the Municipality of Chatham-Kent

**Now Therefore** the Council of the Municipality of Chatham-Kent enacts as follows:

#### **Definitions**

1. For the purpose of this By-Law;

**"Agricultural Lot"** means any lot in which the primary use complies with the "Agricultural Use" as defined by the Zoning By-Law;

**"Lane"** means a public right-of-way which affords a secondary means of access to the abutting lots;

**"Building"** means a structure having a roof, supported by columns or walls, and used for the shelter, accommodation of persons, animals, goods, or chattels;

**"Chief Building Official"** means the person appointed as such by the Council of the Municipality under Section 3 of the *Building Code Act, 1992*, S.O. 1992, c.23, as amended;

**"Corner Lot"** means a lot situated at the intersection of and abutting upon two streets, or upon two parts of the same street, the adjacent sides of which street or streets (or, in the case of a curved corner, the tangents of the street extremities of the side lot line) contain an angle of not more than 135 degrees. In the case of a curved corner the corner of the building lot shall be the point on the street line nearest to the point of intersection of the said tangents;

**"Fence"** means any continuous barrier made of chain, wood, stone, masonry, wrought iron, lattice work, screen or other such material used to enclose or divide in whole or in part a yard or other land or constructed, installed along the perimeter of lands so as to give the inference that the barrier is intended to delineate the boundaries of the lands but excludes a building, privacy screen or hedge as defined in this By-Law. Any berm, retaining wall or other such man-made structure upon which a fence is built shall be deemed to be part of the fence;

**"Gate"** means any part of a fence that opens on hinges, or which is not rigidly fixed in position;

**"Hedge"** means any vegetation, tree, and bush or plant growth;

**"Height"** means the distance measured from the grade at the base of the fence to the highest point of the fence exclusive of the fence posts. In the case of a hedge, the distance from grade at the base of the hedge to the top of the growth;

**"Lot Line"** means the zone boundaries are not shown to be streets or lanes, and where indicated boundaries on the Zoning Map are approximately lot lines, the said lot lines shall be construed to be the zone boundaries unless said boundaries are otherwise indicated on the map.

**"Municipality"** means the Corporation of the Municipality of Chatham-Kent;

**"Non-Residential Lot"** means any lot not zoned residential in the Zoning By-Law and includes but is not restricted to Industrial Zones, Commercial Zones, Institutional Zones, Open Space Zones, Agricultural and Hazzard Zones;

"Picket" means the vertical member of a fence located between the fence posts;

"Privacy Screen" means a visual barrier used to shield any part of a yard from view from any adjacent yard, parcel or highway but excludes a building, fence, or hedge;

"Residential Lot" means any lot in which the primary use complies with the "Residential Use" as defined by the Zoning By-Law;

"Salvage Yard" means any land or structure used for the storage of used motor vehicles, farm machinery, metal, plastic, vinyl, and household appliances, in whole or in part for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or other off-site disposal;

"Visibility Triangle" means a triangular area formed within a lot by;

- (a) intersecting streets and a straight line connecting them 7.6 m (25ft.) from their point of intersection; or
- (b) the intersection of a street and any portion of a driveway within 7.6 m (25ft.) of a property line and a straight line connecting them 7.6 m (25ft.) from their point of intersection.
- (c) the intersection of an alley and any portion of a driveway within 7.6m (25ft.) of a property line and a straight line connecting them 7.6m (25ft.) from their point of intersection, where there is no driveway access from a street
- (d) the intersection of a lane and a street, or two lanes and a straight line connecting them 3.0 m (10ft.) from their point of intersection.

"Yard, Front" means a yard extending across the full width of the lot. Measured perpendicularly from the front lot line to the closest wall of any building or structures on that said lot. Where adjacent residential lots have differing building lines, the main building closest to the front lot line shall apply. Where a lot is a corner lot, the shortest line abutting the street is the front lot line;

"Yard, Rear" means a yard extending across the full width of the lot measured perpendicularly from the rear lot line to the closest wall of any building or structure on that said lot

"Yard, Side" means a yard extending from the front yard or front lot line where the front yard is provided to the rear yard, or rear lot line where no rear yard is provided, measured perpendicularly from the side lot line to the closest wall of any building or structure on the said lot

"Yard, Side, Exterior" means a side yard immediately adjoining a street;

"Zone" means an area delineated on a Map Schedule of the Zoning By-Law;

"Zoning By-Law" means any By-Law administered by the Municipality that was passed pursuant to section 34 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended;

2. No person shall erect, construct, maintain, cause, or permit to be erected, constructed, or maintained, any fence that does not comply with the provisions of this By-Law, unless such fence was erected in compliance with a predecessor of this bylaw and has not been moved, altered, or enlarged in any way.
3. No person shall, without having authority to do so, erect, construct or maintain or cause or permit to be erected, constructed, or maintained, in or upon any street, alley or highway any fence, pole, post, pillar or wire or other such construction.
4. Posts with or without decorative items may exceed the prescribed height restrictions to a maximum of 15 cm (6")
5. A fence enclosing a swimming pool shall conform to The Municipality of Chatham-Kent Bylaw regulating swimming pool enclosures currently in effect;
6. No person shall erect a fence or privacy screen unless it is:
  - a) Constructed of materials specifically designed or commonly used for fencing purposes but does not include tarps or similar materials
  - b) Uniform in colour and pattern

- c) Is in good repair, including being vertical, stable, and structurally sound; and
- d) Is free of projecting fasteners and similar hazards

7. No person shall erect a fence, hedge, privacy screen or other obstruction that will in any way obstruct the use of a fire hydrant or interfere with the operations of the Chatham-Kent Fire and Emergency Services. Not less than a one (1) metre clear space shall be maintained around the circumference of a fire hydrant.

#### Existing Fences

- 8. 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 was, at the time of construction, in compliance with all other applicable by-laws and regulations in force at that time, shall be deemed to comply with this by-law, and may be maintained and repaired, for so long as such fence continues to be the same height, length, width, and comprised of the same material.
- 9. The burden of proof that a fence was in existence prior to the date of the enactment of this by-law is on the party that owns the land on which the fence is constructed.
- 10. Section 8 shall not apply to the requirements set out in sections 11(3), 12(3), and 14(2).

#### Fences on Residential Lots

- 11. No person shall erect, construct or cause or permit to be erected or constructed, a fence on residential lot except in accordance with the following:
  - (1) A fence within any front yard shall not exceed a height of .76 m (30 in.).
  - (2) A fence within any rear yard or side yard shall not exceed a height of 2.1 m (7ft.).
  - (3) No fence or hedge exceeding a height of .76 m (30 in.) shall be erected within any visibility triangle.
  - (4) Notwithstanding subsection 5(1) herein, where a front yard abuts a rear yard of an adjacent corner lot, a fence not exceeding a height of 2.1 m (7ft.) may be erected along that portion of the lot line between said lots provided, however, that the restrictions in subsection 5(3) with respect to visibility triangles must be complied with.
- 12. Notwithstanding subsection 5(1) herein, a fence within any front yard may exceed a height of .76m (30 in), to a maximum height of 1.5 m (5 ft.), provided that:
  - (1) the picket size shall not exceed a maximum width of a 1.90cm (3/4 in).
  - (2) the distance between the pickets shall not be less than. 9cm (3.5")
  - (3) pickets less than 1.2m (4 ft.) tall shall have blunt ends.
  - (4) the maximum width of the vertical post or horizontal rail shall not exceed 6.35 cm (2.5 in).
  - (5) fences that surround the entire perimeter of the property shall be equipped with an opening in the front yard not less than 91 cm (3 ft.), and if equipped with a gate, such gates shall be non-lockable and the path through the opening shall be kept clear at all times, and
  - (6) materials used must be compatible with the residential structure and the scheme of the general neighborhood at the discretion of the Chief Building Official.

A fence installed pursuant to this section shall not be composed of chain link, chicken wire, hog wire, fiberglass and such materials, and the fence shall be free of vegetation that would cause a visual barrier.

#### Fences on Non-Residential or Non-Agricultural Lots

- 13. No person shall erect, construct or cause or permit to be erected or constructed, a fence on a lot that is not a Residential or an Agricultural lot except in accordance with the following regulations:
  - (1) A fence within any front, rear or side yard shall not exceed a height of 3.0 m (10ft.).
  - (2) A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6 m (15ft.).
  - (3) No fence or hedge exceeding a height of .76 m (30 in.) shall be located in any visibility triangle.

(4) No fence exceeding a height of 2.1 m (7ft.) shall be located within any front, rear or side yard that abuts a residential lot.

#### Fences on Agricultural Lots

14. No person shall erect, construct or cause or permit to be erected or constructed, a fence on an Agricultural lot except in accordance with the following regulations:

- (1) A fence within any front, rear or side yard shall not exceed a height of 2.1 m (7ft.).
- (2) No fence or hedge exceeding a height of .76 (30 in.) shall be erected in any visibility triangle.

#### Fencing of Salvage Yards

15. (1) Notwithstanding any other provision of this By-Law, no person shall establish, operate, or maintain or cause or permit the establishment, operation, or maintenance of a salvage yard unless the land on which the salvage yard is located is fenced.

(2) No person shall erect or construct or cause or permit to be erected or constructed, a fence on a lot used as a salvage yard except in accordance with the following provisions:

- (a) Except as provided in clause (c) of this subsection, a fence within any front, rear or side yard shall be not less than 3.0 m (10ft.) and not greater than 4.6 m (15ft.).
- (b) A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6 m (15ft.).
- (c) Notwithstanding clauses (a) and (d) of this subsection, no fence exceeding a height of 76cm (30 in.) shall be erected in any visibility triangle.
- (d) Except as provided in clause (c) of this subsection, a fence in any yard shall be of consistent height and material and shall be fully screened.

#### Fencing of Manure Storage Tanks/Pits

16. (1) Notwithstanding any other provision of this By-Law, no person shall construct or maintain a manure storage tank/pit unless the tank/pit is effectively fenced or enclosed.

(2) No person shall erect, construct or cause or permit to be erected or constructed, a fence enclosing a manure storage tank/pit except in accordance with the following provisions:

- (a) A fence shall be constructed to a total height of not less than 2.1 m (7ft.) above the surrounding grade level.
- (b) The fence shall be adequately supported top and bottom so as to restrict unauthorized entry.

#### Fencing of Cannabis Production Facilities

17. Notwithstanding any other part of this By-law, a Cannabis Production Facility, as defined in the Zoning By-law, is exempt from subsections 13(1), 13(4), 14(1), and 14(3) of this By-law.

#### Barbed Wire Fences

18. (1) No person shall erect or construct or cause or permit to be erected or constructed, a fence composed wholly, or in part, of barbed wire or any other barbed material except in accordance with the following regulations:

- (a) Barbed wire is permitted in a non-residential zone on the top of a fence, provided it projects inwards to the area enclosed by the fence. The height of the said fence shall be not less than 2.1 (7ft) prior to the addition of the barbed wire, provided further, however, that this shall not be construed to prohibit a barbed wire fence enclosing land assessed for farm purposes.
- (b) Barbed tape shall be permitted on the top of a fence erected on a non-residential lot, provided that the fence height is not less than 2.1 m (7ft.) prior to the addition of the barbed tape.

## Electric Fences

19. No person shall erect or construct or cause or permit to be erected or constructed any fence equipped with a device for transmitting an electric current on or through a fence except in accordance with the following provisions:
  - (1) Electric fences are only permitted in areas zoned Agricultural by the applicable Zoning By-Law.
  - (2) Notwithstanding subsection 12(1), electric fences shall not be permitted on residential lots.
  - (3) An electric fence shall have permanent signs, identifying the presence of electrical current, affixed to it. Such signs shall be clearly visible at a distance of 7.6 m (25ft.).
  - (4) No electric fence shall be located adjacent to any residential lot.

## Privacy Screens

20. No person shall erect a privacy screen in any Residential Zone except as provided;
  - a) not to be erected in a front yard
  - b) not to be erected less than 0.9 m (3ft) to a rear lot line
  - c) not to be erected less than 0.9 m (3ft) to an interior side yard except where the privacy screen is located so as to provide a visual barrier between dwelling units divided by a common wall in which case the screen may be located closer to the common lot line;
  - d) not be more than 15.24 m (50ft) in total aggregate length with no single length longer than 4.8 m (15ft) and a minimum distance of 1.52 m (5ft) between single lengths;
  - e) not be erected more than 3.0 m (10ft) above grade and
  - f) not be erected more than 1.82 m (6ft) in height if constructed on a deck or elevated platform.

## Height Calculations

21. The height of a fence at any given point shall be measured from the grade at the base the fence;
  - 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 (8ft) portion.

## Grade Difference Between Lots

22. a) Where grade elevations of adjacent lots differ, the height of the fence shall be measured from the mean grade elevation between the lots.  
b) No person shall alter the grade from which the fence was constructed in order to comply with height limitations.

## Minor Variance

23. The Committee of Adjustment of the Municipality is hereby appointed a Committee of the Council for the purpose of enquiring into and making final decisions on any applications for minor variances from the provisions of this By-law.
24. The Committee may decide that any application be refused or that such relief as it considers appropriate to be granted either absolutely or subject to conditions, which decision is not subject to appeal.
25. The Committee is directed to follow its usual procedure on such application, as may be practical.

## Orders

26. This By-Law shall be enforced by the Chief Building Official.
27. A Municipal By-law Enforcement Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
  - (a) this By-law; or
  - (b) any direction, requirement or order made under this By-law;

28. If a Municipal By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened this By-law or who caused or permitted the contravention, or the Owner or occupier of the property on which the contravention occurred to discontinue the contravening activity and do work to correct the contravention. An order shall set out:
  - (1) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred;
  - (2) the date and time by which there must be compliance with the order;
  - (3) the work to be completed; and,
  - (4) a notice that if the work is not done in compliance with the order by the 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.
29. An order to make under this bylaw may be served personally or by registered mail to the last known address of the owner of the property. Service by registered mail shall be deemed to have taken place five business days after the date of mailing. In addition, an order may be served by a Municipal By-law Enforcement Officer by placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
30. Where a person does not comply with a direction, an order, or a requirement under this By-law to do a matter or thing, the Chief Building Official, with such assistance by others as may be required, may carry out such direction, order, or requirement at the person's expense.
31. The Municipality may recover the costs of doing a matter or thing under section 30 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. Such costs shall include interest charges equal to the rate applicable for property taxes and commencing on the day the Municipality incurs the costs and ending on the day the costs, including the interest, are paid in full.
32. 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 plus interest equal to the rate applicable for property taxes. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Municipality shall register a discharge of the lien in the proper Land Registry Office

#### Offences

33. Every person who contravenes any provision of this By-Law is guilty of an offence and is liable, upon conviction to a fine not exceeding five thousand dollars (\$5,000.00) exclusive of costs for each offence recoverable under the *Provincial Offences Act*, R. S.O. 1990, c. P.33, as amended.

#### Severability

34. It is hereby declared that each and every part of the foregoing provisions of this By-Law is severable. 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 one of the then remaining provisions herein shall remain in full force and effect.

#### Repeals

35. The following By-Laws are hereby repealed:

Municipality of Chatham-Kent By-Law No. 142-2014

Municipality of Chatham-Kent By-Law No. 124-2016

Municipality of Chatham-Kent By-Law No. 50-2019

This By-Law shall come into full force and effect on the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 3<sup>rd</sup> day of October, 2022.

Original signed by:

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Acting Mayor - Doug Sulman

Original signed by:

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Deputy Clerk – Meredith Cadotte