

THE CORPORATION OF THE  
TOWN OF PELHAM  
BY-LAW NO. 4157(2019)

Being a by-law to repeal and replace By-law 1034(1985) being a by-law to prescribe the height and description of lawful fences.

WHEREAS Section 11 of the *Municipal Act*, 2001, S.O.2001, c.25 provides that a lower-tier municipality may pass by-laws respecting structures, including fences;

AND WHEREAS, The Town of Pelham is a lower-tier municipality; within the upper-tier Regional Municipality of Niagara;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

1. **DEFINITIONS**

- (a) **"Officer"** shall mean the By-law Enforcement Officer appointed by the Council of the Corporation of the Town of Pelham for the purpose of the enforcement of Town by-laws; or any Police Officer as defined by the *Police Service Act*, R.S.O. 1990 c.p. 15 as amended.
- (b) **"Grade Level of Roadway"** shall mean the grade level of the centre of the travelled portion of any roadway;
- (c) **"Highway"** shall mean and include a common and public highway, street, avenue, parkway, driveway, square or place designed and intended for or used by the general public for the passage of vehicles, but shall not include an alley;
- (d) **"Intersection"** shall mean the area embraced within the prolongation or connection of the lateral boundary lines of the roadway of two or more highways which join one another at an angle, whether or not one highway crosses the other;
- (e) **"Front Yard"** shall mean a yard extending across the full width of any lot or parcel between the front lot line and the nearest wall of any building or structure on the lot or parcel;
- (f) **"Lawful Fence"** shall mean any fence, wall (other than a wall of a building), hedge or gate which separates or divides any parcel of land or part thereof from any other parcel of land or part thereof, immediately adjacent thereto, which is erected and maintained in accordance with the provisions of this by-law;
- (g) **"Electrical Fence"** shall mean a fence equipped with a device for transmitting an electric current thereon or there

through. It shall not include an underground electrical fence system used for the containment of domestic pets in which the pet wears a receiving collar to deter it from crossing the electrical boundary.

- (h) **"Hedge"** shall mean a row of three or more shrubs or bushes, but shall not include trees having a calibre dimension of 5.0 cm (2") or more;
- (i) **"Rear Yard"** shall mean a yard extending the full width of any lot or parcel from the rear lot line to the wall of any building or structure nearest to the front lot line;
- (j) **"Corner Lot"** shall mean a lot or parcel which is situated at the intersection of and abutting upon two or more streets or parts of the same street provided that the angle contained by two of such lots' or parcels' adjacent lot lines that abut the street or streets is not more than 135 degrees. It does not include a property abutting a Laneway.
- (k) **"Interior Lot"** shall mean a lot or parcel other than a corner lot;
- (l) **"Through Lot"** shall mean an interior lot that abuts more than one street;
- (m) **"Lot Line"** shall mean any boundary of a lot or parcel;
- (n) **"Front Lot Line"** shall mean, in the case of an interior lot, the line dividing the lot or parcel from the street; where the lot or parcel is a corner lot, the shorter lot line abutting a street shall be deemed to be the front lot line and the longer lot line abutting a street shall be deemed to be an exterior side lot line, provided that, where a corner lot has the same dimensions on the two streets upon which it abuts, the lot line abutting the street upon which the building or structure erected or to be erect has its principle entrance shall be deemed to be the front lot line; where the lot or parcel is a through lot, the lot line where the principal access to the lot or parcel is provided shall be deemed to be the front lot line;
- (o) **"Rear Lot Line"** shall mean the lot line farthest from and opposite to the front lot line;
- (p) **"Side Yard" Lot Line** shall mean the lot line other than a front lot line, rear lot line or Corner Side Yard Lot Line.
- (q) **"Corner Side Yard" Lot Line** Shall mean the side lot line that normally abuts a street and is other than a Front Lot Line, Rear Lot line, or Side Yard Lot Line on a Corner Lot.



## **2. FENCES – DEEMED TO COMPLY**

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 other Town of Pelham By-laws, 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.

3. No person shall erect or cause to be erected or maintained or cause to be maintained any fence within the Town of Pelham unless such fence is a lawful fence.
4. No fence shall be maintained or caused to be maintained in a damaged or disrepair state of condition by reason of fire, decay or otherwise and all fences shall be constructed or caused to be constructed in a sound manner and shall be straight and true.
5. No fence of a greater height than 0.5 m (1.8 ft.) above the grade level of any adjacent roadway shall be erected or caused to be erected or maintained or caused to be maintained within 9.1 m (30'-0") of any roadway intersection.
6. No fence of a greater height than 1.22 m (4'-0") above the adjoining ground level shall be erected or caused to be erected or maintained or caused to be maintained in any front yard, provided, however, that the portion of any such fence erected or maintained along the side or rear lot line of the rear yard of any adjoining property may be of a height not greater than 1.82 m (6'-0"). Where a fence is erected on a terrace in a front yard, the height of such fence shall be calculated as the combined height of the fence and the terrace above the adjoining ground level.
7. No fence of a greater height than 1.82 m (6'-0") above the adjoining ground level shall be erected or caused to be erected or maintained or caused to be maintained in any rear yard, provided, however, that the portion of any such fence erected or maintained along the side lot line of the front yard of any adjoining lot shall not be of a greater height than 1.22 m (4'-0") and it should be primarily open which permit, at best, partially unobstructed views rather than solid structures or walls unless such fence is erected or maintained in the rear yard of a corner lot along the side lot line of the front yard of an adjoining property in which case the fence may be erected or maintained to a height not greater than 1.82 m (6'-0").

## **8. CORNER LOTS**

Notwithstanding the provisions of any other section of this by-law, the following criteria shall apply to all corner lot fencing;



- 8.1 Where Corner Side Yard fencing occurs, the fence should meet the side of the house at a minimum distance of 1.5m (5.0 ft.) – 2.0m (6.6 ft.) from the rear corner of the unit, and may extend up to  $\frac{1}{4}$  (one quarter) of the length of the house or to a change of plane (i.e. bump-out, bay window, etc.);
  - 8.2 Fencing around front and/or Corner Side Yards should not block the view of the sidewalk from the house; Its height shall be limited to 1.2m (4.0 ft.) starting at the point  $\frac{1}{4}$  (one quarter) of the length of the house measured from the rear corner of the unit, or from the change in plane (ie. bump-out, bay window, etc.) and it should be primarily open which permit, at best, partially obstructed views rather than solid structures or walls;
  - 8.3 No fence of a greater height than 0.5 m (1'-8") above the grade level of any adjacent roadway shall be erected or caused to be erected or maintained or caused to be maintained within 9.1 m (30'-0") of any roadway intersection.
  - 8.4 Fencing will be designed to incorporate a gate on the portion of the fence that returns from the Corner Side Yard lot line to the side wall; and,
  - 8.5 The exact location and design of Corner Lot Fencing will be determined as described in a subdivision agreement if such description exists.
9. A fence may be erected or caused to be erected or maintained or caused to be maintained to a height no greater than 2.43m (8.0 ft) in any rear or side yard where a rear or side lot line abuts a commercial or industrial zoned property, provided however, that the portion of such fence erected or maintained along the side lot line of the front yard of any adjoining lot shall not be of a greater height than 1.22m (4.0 ft).
  10. A fence not exceeding 2.44m (8.0 ft.) in height above the adjoining ground level shall be permitted around the perimeter of any parcel of land used for Commercial, Agricultural or Industrial purposes wherever such parcel does not abut a residential use. Where such parcel does abut a residential use, Section 8 of this By-law shall apply.

#### **11. BARBED WIRE & RAZOR WIRE**

No fence composed wholly or partly of barbed wire, razor wire or other barbed material, shall be erected or caused to be erected or maintained or caused to be maintained, within the Town of Pelham; however, barbed wire or other barbed material may be permitted along the top of any fence of a greater height than 2.14 m (7'-0") enclosing land used for commercial or industrial

purposes, wherever such land does not abut land used for residential purposes, and the manner of affixing such barbed wire or other barbed material is approved by the Enforcement Officer. This section shall not apply to barbed wire fences erected in agricultural areas for the purpose of confining livestock or on properties where provincial or federal regulations apply.

## **12. ELECTRIFIED FENCES**

Electrified fences are prohibited within the Town of Pelham except when used in the following situations:

- (a) For the containment of livestock on Agricultural Zoned properties. Such fencing is to be clearly marked with warning signs indicating the fence is electrified. Signs are to be spaced a maximum 30.5m (100 ft.) apart and are subject to approval from the By-law Enforcement Officer.
- (b) For properties where Provincial or Federal Regulations apply Electrified Fences are to be clearly marked with warning signs indicating the fence is electrified. Signs are to be spaced a maximum 30.5m (100 ft.) apart and are subject to approval from the By-law Officer. Should Provincial or Federal regulations mandate signage requirements for electrified fences, the strictest regulation shall apply.
- (c) In all circumstances it is an offence for an Electrified Fence to produce an electrical charge or field greater than 120 volts at .04 amps.

## **13. POWERS OF ENTRY**

13.1 Officer - enter on land; an Officer, and anyone under the Officer's direction, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this by-law is being complied with.

13.2 Inspection - documentation for the purposes of an inspection, the Officer may:

- (a) require the production for inspection of documents relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection; and,
- (d) alone or in conjunction with a person possessing special



or expert knowledge, make examinations or take photographs necessary for the purposes of the inspection.

13.3 Inspection- receipt; A receipt shall be provided for any document or thing removed during an inspection and the document or thing shall be promptly returned after the copies or extracts are made.

14. All fences erected along a highway or any part thereof shall be maintained and kept in a proper state of repair and condition in accordance with the provisions of this by-law.

15. Schedule "A" attached hereto shall form part of this by-law.

16. **EXEMPTIONS**

The provisions of this by-law shall not apply to any fence or other barrier wholly or partially enclosing lands owned and in use by the Corporation of the Town of Pelham or any Boards, Commissions or companies providing telephone, electric, water or gas service to the inhabitants of the Town of Pelham. It shall also not apply to a fence that complies with a municipal permit or with a site plan agreement, subdivision agreement or other development agreement to which the Town is a party.

17. **ORDERS**

17.1 Order to Discontinue Activity If an Officer is satisfied that this by-law has been contravened, the Officer may make an order, known as an Order to Discontinue Activity, requiring the person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravention.

17.2 Order to Discontinue Activity - particulars an Order to Discontinue Activity shall set out:

- (a) the municipal address of the property on which the contravention occurred;
- (b) the date of the contravention;
- (c) the reasonable particulars of the contravention of the by-law;
- (d) the date by which there must be compliance with the order; and
- (e) the date on which the order expires.

17.3 Order to Discontinue Activity - service The Order to Discontinue

Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

17.4 Work Order – contravention of by-law If an Officer is satisfied that a contravention of the by-law has occurred, the Officer may make an order, known as a Work Order, requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do the work to correct the contravention.

17.5 Work Order – Contents; The Work Order shall set out:

- (a) the municipal address or the legal description of the land;
- (b) reasonable particulars of the contravention and of the work to be done;
- (c) a deadline, being a specific date, for compliance with the Work Order; and
- (d) a notice that if the work is not done in compliance with the Work 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.

17.6 Work Order – Service

The Work Order may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

17.7 Work Order – Unable to effect service

If the Town is unable to affect service on the owner under section 17.6, it shall place a placard containing the terms of the Work Order in a conspicuous place on the land and may enter on the land for this purpose. The placing of the placard shall be deemed to be sufficient service of the Work Order.

## 18. REMEDIAL ACTION



18.1 Remedial Action – Every person who has, erects, constructs, maintains, or permits to be erected, constructed or maintained any fence that does not comply with the provisions of this by-law shall forthwith take any necessary action to ensure that the fence complies with the provisions of this By-law.

18.2 Remedial Action – Work done by Town

In default of the work required by this By-law or by a Work Order not being done by the person directed or required to do it, the Town in addition to all other remedies it may have, may do the work or cause the work to be done at the person's expense and may enter upon land, at any reasonable time, for this purpose.

18.3 Remedial Action – Recover costs

The Town may recover the costs incurred by it in doing the work or causing it to be done from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. Costs include interest calculated at a rate of fifteen (15) per cent, calculated for the period commencing on the day the Town incurs the costs and ending on the day the costs, including interest, are paid in full.

18.4 Remedial Action – Lien

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 accrued at fifteen (15) per cent to the date payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Town shall register a discharge of the lien in the proper Land Registry Office.

## 19. ENFORCEMENT

19.1 Fine

Enforcement if this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:

- (a) Prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) Requiring the person convicted to correct the contravention in the manner and within the period that



the court considers appropriate.

**20. SEVERABILITY**

It is hereby declared that each and every of the foregoing provision of this by-law is severable and that, 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 of the then remaining provisions hereof shall remain in full force and effect.

**21. PENALTY**

Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a penalty as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P. 33 as amended.

**22. BY-LAWS REPEALED**

By-law No. 1034(1995), 1958(1997), 2192(2000), 2597(2004), 2712(2005), 2809(2006), 2843(2007), 3033(2009), 4028(2018), and 3214(2011) are hereby repealed.

**23. SHORT TITLE**

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

**24. EFFECTIVE DATE**

That this by-law shall become effective on the date of third reading as set out below.

READ A FIRST, SECOND AND THIRD TIME

AND FINALLY PASSED BY COUNCIL THIS

23 DAY OF September, 2019

  
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Mayor

  
\_\_\_\_\_  
Town Clerk

