

The Corporation of the Municipality of Brighton

By-Law No. 076-2023

A By-Law to Provide for Regulating and Governing Fences and Privacy Screens in the Municipality of Brighton, as Revised

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, subsection 11(1) of the Municipal Act, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

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 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 Municipality from the provisions of the Line Fences Act, R.S.O. 1990, c.L.17, as amended;

And Whereas, Section 434.1 (1) of the Municipal Act, without limiting sections 9, 10 and 11, a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a By-Law of the municipality passed under this Act;

Now Therefore - the Council of the Corporation of the Municipality of Brighton hereby enacts as follows:

Part 1

Definition

1. In This Bylaw:

“Building” means any permanent structure used or intended to be used for the shelter, accommodation or enclosure of persons, animals or goods, but shall not include a lawful boundary wall or fence;

“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 at the street extremities of the side lot lines) contain an angle of not more than 135 degrees. In the case of a curved corner, the corner of the building lot shall be that point on the lot line abutting a street nearest to the point of intersection of the said tangents;

“Corner visibility triangle” means a triangular area formed within a corner lot by the intersecting lot lines abutting the streets or the projections thereof and a straight line connecting them 5.4 metres (17.7 feet) from their point of intersection;

“Council” means the Council of the Municipality;

“Driveway visibility triangle” means a triangular area formed by the intersection of the lateral limit of the travelled portion of a driveway and the street line or sidewalk (if existing) or the projections thereof, and a straight line connecting them 2.7 metres (8.9 feet) from their point of intersection;

“Disrepair” means the state of construction is less than 50% of its reconstruction value;

“Effective ground level” means the highest level of the ground within 1.0 m (3 ft 3 in) horizontally in any direction from the point being considered;

“Fence” includes a railing, wall, line of posts, wire, gate, boards, pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, to establish a property boundary, or to provide privacy; and includes any hedge or grouping of shrubs used for the same purpose located in corner visibility triangle or driveway visibility triangle;

“Finished side” means that the fence construction is completed, where either both sides of the fence have the same appearance, or the side that is not facing the fence owner’s property is free of evidence of structural components, such as posts, and is the most aesthetically attractive;

“Height” means the distance measured from the effective ground level where the fence posts are embedded to the top of the said fence or posts; provided that where a fence is located on top of a retaining wall, "height" means the vertical distance measured between the top of the retaining wall and the highest point of the fence or posts;

“Lot line” means the line formed by the boundary of any lot;

“Municipality” means The Corporation of the Municipality of Brighton;

“Officer” means a Municipal Law Enforcement Officer whose duties include the enforcement of this by-law, and a Police Officer;

“Privacy screen” means a visual barrier used to shield any part of a yard from view from any adjacent parcel or highway;

“Residential zone” means any land zoned Residential under the Municipality’s zoning by- law;

“Yard” means an open, uncovered space on a lot appurtenant to a building and unoccupied by buildings or structures;

“Yard, front” means a yard extending across the full width of a lot between the front lot line and the nearest point of the principal building on the lot;

“Yard, rear” means a yard extending across the full width of the lot between the rear lot line and the nearest point of the principal building on the lot;

“Yard, side” means a yard extending from the front yard to the rear yard between the side lot line and the nearest point of the principal building on the lot;

“Zoning By-law” means any by-law administered by the Municipality passed pursuant to section 34 of the *Planning Act*, R.S.O. 1990, c.P.13, or a predecessor or successor thereof, as may be amended from time to time.

“Municipality” means The Corporation of the Municipality of Brighton;

“Officer” means a Municipal Law Enforcement Officer whose duties include the enforcement of this by-law, and a Police Officer;

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Part 2

Fences – Contrary to Regulations

2.1 Prohibited

No person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence that does not comply with the provisions of this by-law.

2.2 Prohibited -Height

Subject to sections of this By-law that read to the contrary, no person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence exceeding a height of 2.0 metres (6.5 feet).

2.3 Restriction – Materials of Construction – ResidentialZone

(a) No person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence comprised of sheet metal or corrugated metal panel members on a lot used for residential purposes.

(b) No residential fence shall be constructed with concrete panels or blocks.

(c) No fence shall be installed or maintained or reinforced with metal or similar materials more than 3 millimeters in thickness.

2.4 Contravention ofOrder

No person shall contravene a Work Order or an Order to Discontinue Activity.

2.5 Hinder orObstruct

No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty, including carrying out an inspection.

2.6 Construction

No person shall construct a fence unless the fence is:

- (a) Stable;
- (b) Vertical;
- (c) Made of good quality materials;
- (d) Suitable for the intended purpose;
- (e) Constructed and supported in a manner commensurate with the design of the entire fence;
- (f) Structurally capable of safely sustaining its own weight and any load to which it might normally and reasonably be subjected; and
- (g) Constructed in a manner accepted as good workmanship in the trades concerned.

2.7Drainage:

No person shall construct a fence over a drainage easement, swale, or watercourse as to obstruct the flow of water, without constructing a water gate sufficient to ensure adequate drainage.

(a) All water gates on fences shall at all times be kept free from obstruction by the Owner of such fence.

(b) No person shall construct a fence over a storm, sanitary or water main that is subject to publicly owned or subject to a public easement without first obtaining permissions from the Municipality.

- (c) Exemption: a water gate may not be required for fences in which sufficient ground clearance has been established.

2.8 Width:

No person shall construct a fence or privacy screen that is greater than 0.2 metres wide.

2.9 Agricultural Lots

The requirements of this by-law with respect to the height of fences do not apply to a fence on an agricultural property that is necessary for the raising of livestock or for other agricultural purpose.

2.10 Environmental Protection ‘EP’ Zone or High Water Mark

No fence except for agricultural purposes shall be erected within an Environmental Protection “EP” Zone or to within 15 metres of a high water mark.

Part 3

Existing Fences

3.1 Fences - Deemed to Comply

- (a) 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 Municipality of Brighton 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.
- (b) Despite 3.1 (a) above, existing fences that are in non-compliance with this by-law, as amended, shall be made to comply with this by-law in the event that:
1. Thirty five percent (35%) or more of the linear measurement of the fence has been removed, naturally destroyed, or neglected in a state of disrepair for one (1) year or more;
 2. The fence obstructs water flows associated with historically natural drainage or drainage flows accommodated through a Municipally approved stormwater, grading or drainage plan; or,
 3. A fence represents a risk to the health and safety of any person or the public in general.
- (c) Where a development covenant by a developer of a subdivision or the declarations of a registered condominium has established on title stipulating where and to what design a fence may be constructed that is otherwise prohibited by this by-law, this by-law grants exception to such stipulations or declarations to the extent that a conflict arises therein.
- (d) Subsection 3.1(a) shall not apply to:
4. the applicable requirements herein to a fence within a corner visibility triangle or driveway visibility triangle, such requirement shall apply;
 5. any fence that obstructs or inhibits or potentially obstructs or inhibits drainage flows, as naturally occurring or as intended through an approved design by the Municipality or provincial agency;
 6. any fence that through poor construction or aging materials represents a health or safety issue to the owner, owner of adjacent land, or a passerby.

Part 4

Residential Fences

4.1 Height –location

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained a fence on a lot used for residential purposes except in accordance with all of the following regulations:

- (a) on a residential property, a fence within any yard shall not exceed a height of 2.0 metres (6.5 feet);
- (b) notwithstanding section 4.1 (a) above, a fence may be topped with a 20cm screening lattice having a proportion of voids of no less than 50%;

- (c) no fence shall 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 2.5 metres (8.2 feet) wide giving access to such parking space;
- (d) no fence exceeding 0.9 metres (3 feet) in height may be erected within any corner visibility triangle or driveway visibility triangle or the front yard or exterior side yard of a residential property;
- (e) no fence exceeding 0.9 metres (3 feet) in height may be erected within 15 m of the highwater mark of Lake Ontario or its bays and inlets;
- (f) the provisions of subsection (a) do not apply to a fence erected to enclose a privately owned outdoor tennis court on residential property, provided the fence is of chain link construction and located no closer to a property line than 2.0 metres;
- (g) A fence shall be located along the common or shared property line;
- (h) A fence shall not be constructed over an access easement or right-of-way without a gate being installed at same location conveniently opened by persons servient to the easement or right-of-way; and,
- (i) No person shall erect or cause to be erected, on residential property or on lot lines of non-residential property abutting residential property, a chain link fence that is not vinyl or powder coated.

4.2 Height Exceptions

Despite Section 4.1, fences located on a residential property,

- (a) gates may exceed the height restrictions by a maximum of thirty centimetres (30 cm);
- (b) archways forming part of an entrance may exceed the height restrictions to a maximum of two hundred and fifty centimetres (250 cm); and
- (c) decorative caps on structural posts may exceed the height restrictions to a maximum of fifteen centimetres (15 cm).

4.3 Calculation of Height

The height of a fence at any given point shall be measured from the grade at the base of the fence, as follows:

- (a) to the top of the fence where erected at grade and where there is no grade difference between the two sides of the fence;
- (b) from the higher grade to the top of the fence where erected at grade and there is a grade difference between the two sides of the fence.

Part 5

Privacy Screens

5.1 Height -location

A privacy screen may be erected in a side yard or rear yard, if:

- (a) it is more than 4.5 metres (14 ft. 9 inches) from the street line; and
- (b) it is more than 1.2 metres (48 inches) from any 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, such screen may be placed closer along the common property boundary, and;
- (c) it is more than 1.2 metres (48 inches) from the rear lot line; and
- (d) the privacy screen is not more than 12 metres (39 ft. 4 inches) in total length, and no single individual length is longer than 5 metres (16 feet 5 inches); and
- (e) the privacy screen is not more than 3 metres (9 feet 10 inches) above effective ground level (e.g., on top of a retaining wall) when measured in comparison to an adjacent building envelope having an elevation 1 metre higher than the top of fence.

Part 6

Salvage Yards

6.1 Enclosure –specifications

Notwithstanding any other provision herein, a person may have, erect, construct, maintain or permit to be erected, constructed or maintained a fence to enclose land used as a salvage yard provided that such fence shall:

- (a) be not less than 2.44 metres (8 feet) in height and not more than 3 metres (10 feet) in height;
- (b) be set back from all public rights-of way a minimum of 7.62 metres (25 feet); and,
- (c) if on a corner lot, not be within any corner visibility triangle or driveway visibility triangle.

Part 7

Industrial and Commercial Lots

7.1 Enclosure –specifications

A person may have, erect, construct, maintain or permit to be erected, constructed or maintained a fence to enclose a front yard of a lot used primarily for industrial or commercial purposes provided that such fence shall:

- (a) be erected that is higher than three metres (3 m);
- (b) be set back from the front lot line a minimum of 7.5 metres (25 feet); and,
- (c) if on a corner lot, not be within any corner visibility triangle or driveway visibility triangle.

7.2 Core Commercial Area

A person shall not erect a fence in the front yard or exterior side yard of a lot located in the area designated as Core Commercial in the Municipal Official Plan.

Part 8

Barbed or Razor Wire Fences, Fortification

8.1 Prohibited–exceptions

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any barbed or razor wire fence, or construct as to render a fence or privacy screen as a fortification, except that barbed or razor wire is permitted:

- (a) on a fence erected on land used for agricultural purposes for the keeping of livestock;
- (b) on the top of a fence erected on a lot used for commercial or industrial uses provided that it projects inwards to the area enclosed by the fence; and,
- (c) on the top of a fence erected for security reasons around any facility owned, operated or maintained by any level of government or a utility provider.

Part 9

Electric Fences

9.1 Prohibited -exceptions

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any fence equipped with a device for transmitting an electric current thereon or there through, except on agricultural land used for the purpose of keeping livestock provided that the maximum electrical current does not exceed 120 volts at .04 amps and complies with all other applicable legislation.

Part 10

Fences on Municipality Property

10.1 Street line to sidewalk – prohibited –exception

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained a fence from the lot line abutting a street to the sidewalk and along the same on the property of the Municipality unless:

- (a) such fence conforms to the height requirements as prescribed herein; and,
- (b) the owner of the land abutting the property of the Municipality upon which such fence is erected obtains a licence or other authority from the Municipality and agrees to remove the same from the property of the Municipality as and when directed to do so.

Part 11

Conditions

11.1 Development –Redevelopment- Maintenance

- (a) Notwithstanding any other provision herein, a fence which is constructed as required in a registered agreement or agreements entered into with The Corporation of the Municipality of Brighton pursuant to sections 41, 45, 51, or 53 of the Planning Act, as amended, any plans approved by the Municipality in accordance with those sections or shall be deemed not to contravene the provisions of this by-law. Similarly, any review and acceptance by the Municipality of an aggregate site licensed under the Aggregate Resources Act shall be deemed to not contravene this By-law.
- (b) All fences shall be kept and maintained in accordance with the Municipality's Property Maintenance and Occupancy By-law No. 082-2002, as amended.
- (c) The Chief Building Official may require the owner to erect temporary fences at construction or demolition sites of a design deemed appropriate to eliminate, or where not practicable to eliminate, to mitigate a hazard to the public.
- (d) No person shall erect a fence or cause a fence to be erected unless the fence is constructed and finished in such a manner so as to present the finished side thereof, viewable from the public street or viewable from the neighbouring properties.
- (e) No person shall erect or cause to be erected a fence that encroaches onto a registered easement unless otherwise permitted by this By-law.

Part 12

Division Fences

12.1 Line Fences Act

The Line Fences Act shall not apply to any part of the Municipality of Brighton.

12.2 Division Fence – cost – shared adjoining landowners

Each of the owners of adjoining occupied land are to repair, replace or maintain a just proportion of any division fence heretofore or hereafter erected which marks the boundary of their respective properties, or are to bear a just proportion of the cost of any work or erection, repair, replacement or maintenance which has been carried out.

12.3 Division Fence – type – disagreement – procedure

Where owners of adjoining land cannot agree on the type or kind of fence to be erected between them as provided by section 12.2 of this by-law, no contribution to the cost thereof is to be payable unless the party erecting the fence constructs a chain link fence 1.22 metres (4 feet) in height. Only upon such fence being constructed will the provisions of section 12.2 of this by-law apply respecting the apportionment of costs of the said fence.

Part 13

Inspections

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.

Part 14

Variances

14.1 Variance

Upon receiving an application or a referral from Staff, the Committee of Adjustment of the Municipality may exercise its authority under section 45 of the Planning Act in considering interpretations or variances to this By-law.

Part 15

Non-Application of By-law

15.1 Restrictions or prohibitions of this By-law do not apply to the following:

- (a) Height restrictions do not apply to a fence erected upon or abutting land which is used for a railway right-of-way, or for hydro, telephone or utility installations, or for public work installations which are hazardous to the public.
- (b) A fence erected to enclose a tennis court and any other public recreational facility, provided that the fence is of chain link construction.
- (c) A fence required by the Municipality as a condition to an approval under the Planning Act, R.S.O. 1990, c.P.13.

Part 16

Interpretation

16.1 Specific terms or words in this by-law may be interpreted as predicated on provisions and definitions of the Municipality's Zoning By-law, as amended.

Part 17

Offence, Orders

17.1 No person shall erect, own, or maintain, or cause or permit the erection or maintenance of any fence on private property in the Municipality that does not comply with this by-law and any other applicable law.

17.2 Any person who contravenes any of the provisions of this by-law is guilty of an offence.

17.3 If an Officer is satisfied that this by-law has been contravened, the Officer may make 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.

17.4 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.

17.5 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.

Part 18

Fines or Penalties

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 Municipality

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 Municipality 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 Municipality 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 Municipality 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 the rate of 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 Municipality shall register a discharge of the lien in the proper Land Registry Office.

18.5 Fine

Any person who contravenes any provision of this by-law is guilty of an offence and is subject to a minimum fine of \$100.00 and a maximum fine of \$5,000.00.

18.6 Administrative Monetary Penalty

Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with any Administrative Monetary Penalty System By-law, as may apply, be liable to pay the Municipality an Administrative Monetary Penalty.

Part 19

Enactment

19.1 ShortTitle

This by-law may be referred to as the “Fence By-law”.

19.2 Repeal - Enactment

Fencing By-law No. 003-2021 is hereby repealed and replaced with this by-law as so enacted.

Read a first, second and third time, and finally passed this **16** day of **August 2023**.

Brian Ostrander, Mayor

Jessica Polley, Interim Deputy Clerk