Municipality of
Dutton Dunwich

By-Law No. 2021-19

BEING A BY-LAW TO REGULATE THE HEIGHT, LOCATION AND DESCRIPTION OF FENCES ON PRIVATE PROPERTY BY THE CORPORATION OF THE MUNICIPALITY OF DUTTON DUNWICH

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 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.

NOW THEREFORE the Council of the Corporation of the Municipality of Dutton Dunwich enacts as follows;

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

Part I
General

1.1 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.

1.2 The provisions of this By-law shall apply to all properties within the boundaries of the former Village of Dutton, the Hamlets of Wallacetown, Iona and Iona Station, Duttona Beach and Tyrconnell and they will be exempt from Section 20 of The Line Fences Act. The Line Fences Act will continue to apply to all other areas within the boundaries of the Municipality of Dutton Dunwich.

1.3 This By-law does not apply to swimming pool fences. By-law 2017-58 – Provides for the Owners of Privately-Owned Outdoor Swimming Pools to Erect and Maintain Fences and shall be referenced.

Part II
Definitions

In this By-law:

2.1 Building - means a structure occupying an area greater that 10 square metres (108 square feet) 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.

2.2 By-law Enforcement Officer - shall mean a By-law Enforcement Officer appointed by the Municipality of Dutton Dunwich or designate.

2.3 Chief Building Official - means the Officer or employee appointed by By-law of the Municipality of Dutton Dunwich charged with the duty of enforcing the provision of the Building By-law, Building Code Act and its applicable regulations.

2.4 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.

2.5 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 9 metres (29.5 feet) 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.

2.6 Driveway Visibility Triangle - means the triangular space formed by joining the point on a property line and the driveway established by measuring 4.5 metres (14.8 feet) in each direction along the property line abutting a street and along a driveway from the point where said property line and driveway intersect.

2.7 Dwelling - means a building containing one or more dwelling units but does not include a trailer or mobile home.

2.8 Exempt Areas – means the former Village of Dutton, the Hamlets of Wallacetown, Iona and Iona Station, Duttona Beach and Tyrconnell.

2.9 Exterior Side Yard - means a side yard immediately adjacent to a street, other than the front lot line.

2.10 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 Municipality Zoning By-law.

2.11 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.

2.12 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.

2.13 Gate - shall include a door or other device constructed that may be opened to gain access to an area enclosed by a fence.

2.14 "Ground Level" means the ground level at the fence line, but where the ground levels are not the same on both sides of the fence, the higher of such levels shall be considered as ground level for the purpose of the fence;

2.15 Height - means the vertical distance from the base of the fence at ground level to the top of the fence including fence posts.

2.16 Interior Side Yard - means any side yard other than an exterior side yard.

2.17 Municipality - means the Corporation of the Municipality of Dutton Dunwich.

2.18 Owner- shall include any person who has lawful possession of any lands or premises.

2.19 Permanent – means intended to last or remain unchanged indefinitely.

2.20 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.

2.21 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.

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 2.0 metres (6.5 feet) from a fire hydrant, except that a fence may be located no closer than 1.0 metres (3.25 feet) from the rear of a fire hydrant as viewed from the centre of a municipal road allowance;

e) exceed 1.83 metres (6 feet) 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 erected in a daylight corner or sight triangle unless specifically permitted by this By-law.

h) 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 2.59 metres (8.5 feet) 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 0.6 metres (2.0 feet) 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 metres (7.9 feet).

3.6 A boundary fence in side yards or rear yards may be 2.13 metres (7.0 feet) in height provided any portion of the fence over 1.83 metres (6.0 feet) is of open type, decorative construction.

3.7 No fence shall exceed 0.80 metres (2.6 feet) in height within a front yard.

3.8 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 Municipality, a fence on any property zoned Commercial, Industrial or Institutional shall not exceed 2.44 metres (8.0 feet) 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 metres (6.0 feet) 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 metres (64,580 square feet) 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 Part III of this By-law shall apply to the construction of a fence to contain livestock on a lot larger than 2750 square metres (29,600 square feet).

5.4 A livestock fence shall be built and maintained in good farming practice and building practice at the discretion of the CBO or designate and shall be constructed and maintained 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 metres (100 feet) intervals, a sign warning that the fence carries electricity.

Part VI
Height Calculations

6.1 The height of a fence at any given point shall be measured from the ground level 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 2.13 metre (7.0 feet) portion.

6.2 Where grade elevations of adjacent lots differ, the height of any boundary fence shall be measured from the higher ground level for the purpose of the fence;

Part VII
Sight and Visibility Triangles

7.1 No fence or hedge shall exceed 0.80 metres (2.6 feet) 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 1.98 metres (6.5 feet).

Part VIII
Variances

8.1 Any person, being the occupier or owner of land in the Municipality , 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 IX
Penalty

9.1 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.

9.2 Where anything required to be done in accordance with this By-Law is not done, the Municipality or a person or persons designated by the Municipality 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 X
Exemptions

10.1 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 Municipality 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 XI
Severability

11.1 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 XII
Date By-Law Comes into Force

12.1 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 this 24th day of February 2020.

READ a third time and finally passed this 24th day of February 2020.

Robert (Bob) Purcell, Mayor

Heather Bouw, CAO/Clerk

SCHEDULE 'A'

THE CORPORATION OF THE MUNICIPALITY OF DUTTON DUNWICH

BY-LAW NO. 2021-19

PART I PROVINCIAL OFFENCES ACT

TITLE: FENCE BY-LAW

Item	Short Form Wording	Provision Creating or Defining Offence	Set Fine
1	Farm Fence for housing of livestock not maintained	5.4	$250.00
2	Fence equipped to transmit electrical current (exception: agricultural fences for livestock or crops)	5.5. (a)	$250.00

Note: the general penalty provision for the offences listed above is Section 9.1 of By-law 2020-82, a certified copy of which has been filed.

OFFICE OF THE REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE
WEST REGION

80 DUNDAS STREET, 10th FLOOR, UNIT L
LONDON, ONTARIO N6A 6A8

CABINET DU JUGE PRINCIPAL RÉGIONAL
COUR DE JUSTICE DE L'ONTARIO
RÉGION DE L'OUEST

80, RUE DUNDAS, 10e ÉTAGE, UNITÉ L
LONDON (ONTARIO) N6A 6A8

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Ms. Heather Bouw
Deputy Clerk
Municipality of Dutton Dunwich
Box 329, 199 Currie Road
Dutton, Ontario N0L 1J0

Dear Ms. Bouw:

Re: Set Fines - Provincial Offences Act - Part I
By-law Number 2021-19, of the Municipality of Dutton Dunwich

Enclosed herewith is an original Order, and an original schedule of set fines for the above referenced By-Law, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

Please ensure that a copy of the said documents is forwarded to the Provincial Offences Offices in St. Thomas together with a copy of the By-Law.

Yours truly,

Jeanine E. LeRoy
Regional Senior Justice
West Region

encl.
/ec

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 2021-19, of the Municipality of Dutton Dunwich, attached hereto are the set fines for those offences. This Order is to take effect April 15, 2021.

Dated at London this 15th Day of April 2021.

Jeanine E. LeRoy
Regional Senior Justice
West Region

April 15, 2021

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