

# The Corporation of the City of Kenora

## By-Law Number 163 - 2015

### A Bylaw to Provide that the Line Fences Act does not apply to all of Kenora and for the Regulation, Erection and Maintenance of Fences in the City of Kenora

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Whereas paragraph 10(2)10 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws respecting structures, including fences; and

Whereas subsections 98(1) and (2) of the Municipal Act, 2001 provides that a municipality may provide that the Line Fences Act, R.S.O. 1990, c. L. 17, does not apply to all or part of a municipality, subject to the continuing applicability of section 20 of the Line Fences Act; and

Whereas it is deemed necessary and expedient to established regulations concerning fences in the City of Kenora;

Now Therefore the Council of The Corporation of the City of Kenora hereby exacts the following:

**1. Short Title**

This By-law may be cited as the "Fence By-law"

**2. Definitions**

For the purpose of this by-law, the following definitions shall apply:

**"Agricultural Use Land"** shall mean any lands upon which animal husbandry, horticulture, beekeeping, dairying, field crops, fruit farming, fur farming, market gardening, pasturage, poultry keeping, mushroom farming or any other farming activity is permitted. This may include growing, raising, small scale packing and storing of produce on the premises, woodlot management and other similar activities customarily carried out in the field of general agriculture.

**"Fence"** shall mean a barrier or any structure, device or other thing, except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining land and, for the purposes of sections 3.1 and 4.1 of this By-law, includes a hedge abutting any front or exterior lot line;"

**"Garden Structure"** means any structure composed of post, boards, pilings, rails, masonry, ornamental iron or similar materials, or any combination thereof erected, used or maintained as a decorative feature or a garden that does not require a building permit to be lawfully erected. Garden structures may be incorporated into fencing as gates, arbours or other features.

**“Height”** means the vertical distance measured between the finished grade at the base of the fence and the highest point of the fence. In the case of a fence located on top of a retaining wall, height means distance between the top of the retaining wall and the highest point of the fence.

**“Lot”** means a parcel of land that abuts a public street and that is registered as a legally conveyable parcel of land.

**“Lot, Corner”** means a lot situated at the intersection of two or more streets, or at the intersection of a street and a railway right of way.

**“Lot, Interior”** means a lot situated between adjacent lots and having access to one (1) street.

**“Lot line”** means any boundary line of a lot.

**“Lot line, exterior”** means the side lot line that abuts the street, opened laneway or railway right of way, on a corner lot.

**“Lot line, front”** means the lot line that abuts the street. In the case where a lot abuts only a road cul-de-sac, all of the frontage on the road cul-de-sac shall be deemed to be the front lot line.

**“Lot line, rear”** means the lot line farthest from or opposite to the front lot line.

**“Lot line, side”** means a lot line other than the front or rear lot line.

**“Lot, through”** means a lot bounded on opposite sides by streets. If any lot qualifies to be a corner lot and a through lot, such lot shall be deemed to be a corner lot for the purposes of this by-law.

**“Non-residential property”** means a property with uses other than residential or multi-residential and includes schools and other institutional uses but does not include public highways or walkways.

**“Owner”** means an owner, lessee, tenant, mortgagee in possession and the person in charge of any property.

**“Pool fence”** means a fence surrounding a private, outdoor swimming pool area, and a division fence which complies with the provisions of this By-law respecting pool fences, shall be deemed sufficient fence.

**“Private outdoor swimming pool”** means a tank, structure or body of water which may be used for swimming purposes and which has a possible maximum depth greater than one half metre (0.5 m) but shall not include an existing natural body of water, a water course or a pond in the areas zone Agricultural, and Open Space in the applicable zoning by-law.

**“Residential property”** means a property which is zoned for residential purposes.

**“Roadway”** means and includes a common and public highway, street, avenue, driveway, square, lane or place designed and intended for use by the general public for the passage of vehicles or pedestrians, but shall not include an alley.

**“Snow Fence”** means a temporary light fence used for the control of snow and which is usually made or constructed of plastic mesh, lightweight wood strip or wire fencing.

**“Yard”** means any open, uncovered, unoccupied space appurtenant to a building.

**“Yard, exterior”** means the side yard immediately adjacent to an exterior lot line.

**“Yard, front”** means a yard extending across the full width of the lot between the front lot line and the nearest wall of any building or structure on the lot for which the yard is required.

**“Yard, rear”** means a yard extending across the full width of the lot between the rear lot line and the nearest wall of any building or structure on the lot for which the yard is required.

**“Yard, side”** means a yard extending from the front yard to the rear yard between the side lot line and the nearest wall of any building on the lot for which the yard is required.

### **Section 3 – Fences Prohibited**

- 3.1 No person shall construct, erect, maintain, or keep or shall cause to be constructed, erected maintained or kept, any fence within the City of Kenora unless such fence such fence is in compliance with this by-law, and/or any other by-law which may apply.
- 3.2 No fence shall be maintained or caused to be maintained in a damaged or un-repaired state or 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 maintained by painting or other suitable means and shall be straight and true.
- 3.3 No fence shall be maintained or caused to be maintained such that it encroaches on or over a roadway or sidewalk thereby creating a hazard to or impede the passage of pedestrians or vehicular traffic.
- 3.4 No person shall erect or maintain, or cause to be erected or maintained, a Snow Fence from May 1st to October 31st in any year on land used for residential or commercial purposes.
- 3.5 No person shall erect or maintain, or cause to be erected or maintained, a Snow Fence from November 1st to April 30th in the following year on land used for residential or commercial purposes, unless the snow fence is being used for the purpose of controlling snow.
- 3.6 Barbed wire shall not be used on any residential property, and when used on other than residential property, shall be at least 2.4 m above ground level.

- 3.7 Notwithstanding the provisions of Section 3.6, barbed wire may be used and to the inside of commercial and industrial fences but shall be at least 2.4 m above ground level, and on farm fences, in a rural zone, where such property does not abut a residential zone as designated in the applicable Comprehensive Zoning By-law; and this by-law does not prohibit existing barbed wire fences enclosing land assessed for farm purposes at the coming into effect of this by-law and continuing to be so assessed.
- 3.8 Electric current shall not be used as a part of, or in conjunction with, any fence except where such fence is located entirely on agricultural use lands, provided such fence:
- a) has a maximum 12 volt trickle charge,
  - b) is designed and erected solely to contain animals, and;
  - c) has attached thereto, at approximately 15.25 m intervals, a sign warning that the fence carries electricity.

#### **Section 4 – Fence Height – Residential property**

- 4.1 A solid fence may be erected up to a maximum height of 1.8m if located back of the established front building line, established in the applicable Comprehensive Zoning By-law. If located between the established front building line and the street line the maximum height shall be 0.9 m in any zone.
- 4.2 A lattice, louvered or other open type of fence construction may be erected up to a height of 2.0 m if located back of the established front building line or if between the front building line and the street line up to 0.9 m in height.
- 4.3 On any corner lot, no fence, building or structure shall be erected, and no hedge, shrub, bush tree or other plant shall be permitted to grow to a height greater than 1 m above the grade of the roadways that abut the lot, within a triangular area bounded by the roadways and a line joining points on the roadways at a distance of 9 m from the point of intersection.
- 4.4 Notwithstanding the provisions of Sections 4.1 and 4.2 above, on a corner lot a fence not exceeding .9 m in height may be erected to the property line provided the fence conforms to the provisions of Section 4.1 above.

#### **Section 5 – Fence Height – Non- residential properties**

- 5.1 No fence erected on a commercial, industrial or institutional property shall exceed 3.04 metres (10 feet) in height in the rear or exterior side yard.
- 5.2 Fencing in the front yard and exterior side yard shall not exceed 1.2 metres (4 feet) except where such property is lawfully used for the purposes of open storage or storage of vehicles, the maximum height shall be 2.4 metre (8 feet).
- 5.3 Where a residential property is adjacent to a non-residential property, a fence may be permitted to a maximum height of 3.04 metres (10 feet) in a rear or side yard.

- 5.4 A lattice, louvered or other open type of fence construction may be erected up to a height of 2.0 m if located back of the established front building line or if between the front building line and the street line up to 0.9 m in height except that a fence erected of chain link with a maximum height of 2.4 m will be permitted when used to enclose or protect a property for non-residential purposes.

## **Section 6 – Fencing of Private Outdoor Swimming Pools**

- 6.1 Notwithstanding any other provisions of this by-law, no person shall construct or maintain a private outdoor swimming pool unless the pool, or the land on which the pool is located is effectively fenced or enclosed in accordance with the following provisions:
- a) A fence shall be structurally adequate to perform its intended function to prevent unauthorized entry to the swimming pool area;
  - b) Every fence shall be not less than 1.52 m in height;
  - c) Every fence shall be so constructed that all horizontal or diagonal structural members shall be located on the inside or pool side of the fence;
  - d) Every outside face of a fence shall be so constructed that it cannot be used in a manner similar to a ladder. For the purpose of this section, a shadow-type fence is deemed to comply provided the horizontal members are 1.1 m apart;
  - e) Horizontal members shall be located on the pool side of the fence;
  - f) The bottom of the fence members shall not be more than 102 mm (4 inches) above finished grade;
  - g) Every fence shall be constructed so that the only means of entry is by gates or doors of 1.52 m in height, each gate shall be equipped with a lock and self-latching device and kept secured when the pool is not in use;
  - h) A the wall of any dwelling, building or accessory building may be utilized to effectively enclose any pool;
- 6.2 A hedge shall not be used as or considered to be a fence for the purpose of this Section;

### **6.3 Prohibitions**

- 6.3.1 **No construction without permit** – No person shall construct or cause to be constructed, a swimming pool, without first having obtained a swimming pool fence permit from the Chief Building Official, or designate.

- 6.3.2 **Swimming pool not enclosed by fence** – No person shall construct or cause to be constructed a swimming pool which is not completely enclosed by a swimming pool fence, in accordance with this by-law.
- 6.3.3 **Have or keep a swimming pool without permit** – No person shall have or keep a swimming pool without having a swimming pool fence permit from the Chief Building Official or designate, in accordance with this by-law.
- 6.3.4 **Have or keep a swimming pool not enclosed by fence** – No person shall have or keep a swimming pool that is not completely enclosed by a swimming pool fence, in accordance with this by-law.
- 6.3.5 **No construction without temporary fencing** – No person shall fail to enclose a swimming pool with temporary fencing during construction.
- 6.3.6 **Construction fence non-conforming** – No person shall construct or cause to be constructed a swimming pool with a swimming pool fence that does not conform to the requirements of this by-law.
- 6.3.7 **Gate without self-closing /self- latching device** – No person shall fail to equip a swimming pool fence single gate access with a self-closing device and a self-latching device.
- 6.3.8 **Gate self-latching device – distance above ground** – No person shall construct, have or keep a swimming pool fence gate with a self-latching device less than 122 centimeters (48 inches) above ground level, in accordance with this by-law.
- 6.3.9 **Storage of materials against outside of pool fence** – No person shall place or store materials against the outside of a swimming pool fence.
- 6.3.10 **Replacement of existing fence without a permit** – No person shall replace a swimming pool fence without having first obtained a swimming pool fence permit from the Chief Building Official, or designate.
- 6.3.11 **Swimming pool fence – maintain in accordance with the by-law** – No person shall fail to keep, have or maintain a swimming pool fence in accordance with this by-law.
- 6.3.12 **Two gates – self- closing/self-latching device – permanently affixed** – No person shall construct or maintain a double swimming pool fence gate access without one of the two gates having a self-closing and self-latching device. The gate of this double gate access without a self-closing device and a self-latching device must have a device permanently affixed to the ground or other non-movable object that prevents access through this gate without lifting or removing this device and then releasing the latch.
- 6.3.13 **Use of materials – pool fence** – No person shall construct, cause to be constructed, or maintain any pool fence which does not conform to the requirements of section 6.1 of this by-law.

6.3.14 **Completion of pool – filling with water** – No person shall place water in a swimming pool or cause to permit water to remain in the pool unless the required swimming pool fence is completely constructed in compliance with the requirements of this by-law. The required swimming pool fence under this section shall not include a temporary fence.

## **Section 7 – Exemptions**

- 7.1 The provisions of this by-law shall not apply to the erection of fences for public safety by the Corporation of the City of Kenora or any local boards thereof, any Public Utility Commission including telephone, gas and hydro and all Boards of Education.
- 7.2 Where one property abuts another such that the provisions of this by-law provide for two different height requirements, the higher of the two requirements shall apply.
- 7.3 This by-law shall not apply to garden structures, as defined in section 2.2 of this By-law.
- 7.4 Notwithstanding anything in this section, a fence exceeding 4.5 metres, in a rear yard, shall be permitted when such a fence is normally required as part of a private outdoor recreation facility provided such fence shall not be permitted within 2.4 metres (8 feet) of a property boundary.
- 7.5 Council may, upon application by any owner of land, enact a resolution to grant an exemption from the height restrictions set out in this by-law, subject to any conditions imposed by Council.

## **Section 8 - Maintenance**

- 8.1 All fences shall be protected by paint, or other weather-resistant materials unless the aesthetic characteristics of the fence are enhanced by the lack of such material
- 8.2 All fences shall be kept in structurally sound condition and plumb, unless specifically designed to be other than vertical;
- 8.3 All fence shall be kept in good repair and free of accident hazards
- 8.4 All fences shall be kept so as not to present an unsightly appearance.

## **Section 11 – Line Fences Act**

- 11.1 Per Section 98(1) of the Municipal Act, R.S.O., 2001, Chapter M.45, and amendments thereto, and by the adoption of this By-law, the City of Kenora hereby enacts that the *Line Fences Act* does not apply to all or any part of the municipality.

## **Section 10 – Heritage Areas**

- 10.1 Any fence constructed or repaired within an area designated as a heritage conservation district, pursuant to Part V of the Ontario Heritage Act is subject to all requirements for obtaining a permit pursuant to such legislation.

### **Section 11 - Validity**

- 11.1 Where a provision of this By-law conflicts with the provision of another By-law in force within the municipality, the provision that establishes the higher standard to protect the safety of the general public shall prevail.

### **Section 12 – Severability**

- 12.1 Should any section, subsection, clause or provision of this By-law be declared by a Court of competent jurisdiction to be invalid the same 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.

### **Section 13 – Administration, Enforcement & Penalties**

- 13.1 This By-law shall apply to all property within the limits of the municipality.
- 13.2 Any Provincial Offences Officer with the City of Kenora may enforce the provisions of this by-law.
- 13.3 Any person who contravenes any provisions of this by-law is guilty of an offence and is liable on conviction, to a fine of not more than Five Thousand Dollars (\$5,000.00) exclusive of costs and recoverable under the Provincial Offences Act.

### **Section 14 – Variances**

- 14.1 The City of Kenora's Planning Administrator and the Chief Building Official, or in their absence, the Community & Development Services Manager, are hereby delegated as being appointed officers of the City to exercise Council's powers or authority under 23.1 of the Municipal Act, 2001 as amended, to approve variances to the City of Kenora Fence By-law and to impose conditions to the variance(s).
- 14.2 Notwithstanding the provisions of Section 14.1 of this By-law, where an application is referred back, or requested to be referred back to Council, Council's power and authority with respect to all powers or authority under section 23 of the Municipal Act, shall be retained.
- 14.3 Notwithstanding the provisions of Section 14.1 of this By-law, Council shall retain all powers and authority under the Municipal Act where:
- a) That the City of Kenora's Planning Administrator and/or the Chief Building Official at his/her sole discretion refers the matter to Council; or
  - b) That the applicant requests in writing that the matter be referred to Council for a review of the decision or decision; or



- c) That any member of City Council may make a request in writing, to the Community & Development Services Manager, that the request for a variance to the City of Kenora Fence By-law be referred to the Council. Upon receipt of such request, the Community & Development Services Manager, or, in the absence of the Manager, Planning Administrator and/or the Chief Building Official shall refer the matter to Council for decision.
- 14.4 That notice of receipt of an Application for variance from the City of Kenora Fence By-law shall be circulated to the Mayor and members of City Council at the same time as it is circulated to the internal technical departments and external agencies for review and comment.
- 14.5 That the scope of the delegated authority shall not be exceeded by the delegate.
- 14.6 That delegates shall ensure the consistent and equitable application of Council policies and guidelines.

This By-law shall come into effect upon final reading thereof.

That By-Law Number 94-2006 and 31-2014 is hereby repealed.

**By-law read a First and Second Time this 17<sup>th</sup> day of November, 2015**

**By-law read a Third and Final Time this 17<sup>th</sup> day of November, 2015**

**The Corporation of the City of Kenora:-**

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**David S. Canfield, Mayor**

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**Heather Kasprick, City Clerk**