

## Corporation of the Town of Amherstburg

### By-law No. 2022-027

#### A By-Law of the Corporation of the Town of Amherstburg to Prohibit the Height and Description of Lawful Fences

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**WHEREAS** Sections 8, 9 and 10 of the Municipal Act, 2001 authorize the Town of Amherstburg to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6 and 8 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the protection of persons and property.

**AND WHEREAS** section 425 of the Municipal Act, 2001 authorizes the Town of Amherstburg to pass by-laws providing that a person who contravenes a by-law of the Town of Amherstburg passed under that Act is guilty of an offence;

**AND WHEREAS** section 426 (1) of the Municipal Act no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act.

**AND WHEREAS** section 435 of the Municipal Act unless otherwise provided in this Act, in an order under section 438 or in a warrant under section 439, the following conditions apply to the exercise of a power of entry of a municipality under this Act

**AND WHEREAS** section 436 (1) A municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law

**AND WHEREAS** section 444 of the Municipal Act, 2001 authorizes the Town of Amherstburg to make an 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 discontinue the contravening activity

**AND WHEREAS** section 445 of the Municipal Act, 2001 authorizes the Town of Amherstburg to make an 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 work to correct the contravention. 2006, c. 32, Sched. A, s. 184; 2009, c. 33, Sched. 21, s. 6 (38).

**AND WHEREAS** section 446 of the Municipal Act, 2001 authorizes the Town of Amherstburg to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense. 2006, c. 32, Sched. A, s. 184.

**AND WHEREAS** the Municipal Act, 2001 further authorizes the Town of Amherstburg, among other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

**AND WHEREAS** the Police Services Act, R.S.O. 1990, Section 15 authorizes the municipality to appoint persons to enforce the by-laws of a municipality and that Municipal Law Enforcement Officers are Peace Officers for the purpose of enforcing municipal by-laws;

**THEREFORE**, the Council of the Town of Amherstburg enacts as follows:

**Short Title**

This By-law may be, referred to as the "**Fence By-law**".

**Part 1 – Definitions**

**“Acceptable Sign”** means a sign that is affixed to a fence that conveys non-offensive or typical messaging such as but not limited to; the address of the property, name placard, no trespassing, beware of dog etc.... Officer(s) designated to enforce this By-law have the authority to deem what constitutes an acceptable sign

**“Agent”** means a person(s) or company who has been legally empowered to act on behalf of the Town of Amherstburg.

**“Chief Building Official”** means the officer or employee of the Town charged with the duty of enforcing the provisions of the Ontario Building Code Act and the provisions of the By-law or his/her designate.

**“Council”** means The Council of the Corporation of the Town of Amherstburg

**“Decorative Gate Feature”** means an altered section intended to look attractive and looks different than, the portions defined as fence

**“Dwelling”** means a building, occupied or designated to, be occupied exclusively as a home, residence or sleeping place by one (1) or more persons, but shall not include hotels, boarding, lodging, or rooming houses, tourist homes, nursing homes, motels, institutions, or travel trailers.

**“Erect”** means the alteration, construction, placement, relocation and any work preparatory to erect any fence or part thereof

**“Fence”** means any continuous barrier made of chain, wood, stone, masonry, latticework, screen, or other similar material used to enclose or divide in whole or in part one yard from another. Any berm, retaining wall or other such manmade structure upon which a fence is built, shall be deemed part of the fence

**“Fence Height”** means the vertical distance measured between the grade to the highest horizontal member of the top of the fence, and in instances where the grade is different on two sides of a fence, the higher grade shall be, used to measure the fence. Any fence post may project a maximum of 0.2 meters (8-inches) above the fence height

**“Gate”** means a door or other device attached to a fence that can be, opened to gain access to an area enclosed by a fence.

**“Gate Height”** means the vertical distance measured between the grade to the highest horizontal member of the top of the fence, and in instances where the grade is different on two sides of a gate, the higher grade shall be, used to measure the gate. A decorative feature constructed above a gate may project a maximum of 0.6 meters (2-feet)

**“Grade”** means the highest level of ground at a fence location within a horizontal distance of 0.5 meters (19.7-inches)

**“Good Repair”** means structurally sound, not falling over and includes being free from cracked, damaged, rotted, warped, loose, or unfastened components. Also includes that all surfaces that have been previously painted, stained, varnished or which have received other similar protective finishes shall be maintained without visible deterioration.

**“Hazardous Fence”** means a fence constructed with any barbwire, other sharp or barbed materials, or a fence to be, used as a conductor of an electrical current.

**“Highway”** includes a common and public highway, street, avenue, parkway, driveway access, square, place, bridge, viaduct or trestle designed and intended for or used by the general public for the passage of vehicles and includes the grassed areas, boulevards, ditches, curbs, gutters and sidewalks and all other areas between the lateral property lines thereof;

**“Hot Tub”** means a tub filled with hot aerated water used for recreation or physical therapy, includes a Jacuzzi, spa or hydro massage pool

**“Lot”** means a parcel of land described in a deed or other document legally capable of conveying land or shown as a lot or block on a registered plan of subdivision, other than a registered plan of subdivision which has been deemed not to be a registered plan of subdivision by a By-law passed pursuant to Section 51 of the Planning Act, 1990 as amended from time to time, or any successors thereto, and does not include a water lot as defined herein.

**“Lot Line”** means any boundary of a lot or the vertical projection thereof

**“Notice”** means an order to comply pursuant to this By-Law

**“Officer”** means a person appointed by the Town of Amherstburg as a By-Law Enforcement Officer, Chief Building Official or Provincial Offences Officer;

**“Owner”** means the registered owner, owner in trust, a mortgagee in possession, a person who is managing or receiving the rent of the property, a lessee or a person who is in control of the property and includes a person, firm, partnership, corporation, company, association, or organization of any kind and its principal(s);

**“Person”** means an individual, firm, proprietorship, partnership, association, syndicate, trust, corporation, department, bureau or agency.

**“Pool Enclosure”** means a permanent fence that is a minimum of 1.22 meters (48 inches) in height, which is required to restrict unauthorized access to a swimming pool on all sides and equipped with self-closing and self-latching gate(s):

- (a) must be in place once the pool is being filled and/or prepared to use as intended
- (b) constructed of materials that are rigid and unclimbable
- (c) maintained in a structurally sound condition
- (d) can include portion(s) of a structure(s) so long as unauthorized access is restricted in the opinion of the officer
- (e) properties abutting a natural body of water are not exempt from having a complete pool enclosure
- (f) maintained in good repair
- (g) maintained where the bottom of the fence is more than 10.2 centimeters (4 inches) from the ground
- (h) maintained where any components create an opening of more than 10.2 centimeters (4 inches)
- (i) a chain link fence where the open diamond mesh is not greater than 5.1 centimeters (2 inches)
- (j) is not a hazardous fence
- (k) does not create an unsafe condition

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

**“Property”** means any grounds, yard, vacant lot or watercourse, meaning any natural route or alterations to such route, including rivers, lakes, streams, creeks and channels

in which the flow of storm water, groundwater, run-off or precipitation flow is either intermittent or continuous

**“Property Line”** means the legal boundary of a lot

**“Public Highway”** means any portion of a highway under the jurisdiction of municipal, provincial or federal government or its agencies, boards, commissions, departments or other bodies

**“Public Property”** means land owned by the Town

**“Residential Lot”** shall mean any property zoned as residential as set out in the Zoning By-law 1999-52 (as amended);

**“Self-closing”** means a mechanical device, hardware or spring which returns a pool enclosure gate to its closed position without human assistance and within 30 seconds after it has been opened.

**“Self-latching”** means a mechanical device, hardware or latch, mounted on the poolside, at least 119 centimeters (47 inches) above the ground which is engaged each time a pool enclosure gate is secured to its closed position, and remains closed until human intervention opens the gate by activating the required mechanism.

**“Swimming Pool”** means any manmade structure or container located outdoors on privately owned property that may be, used to contain water for the purposes of swimming, wading or bathing:

- (a) which is capable of holding a minimum water depth of 60 centimeters (23.6 inches)
- (b) which has a surface area of more 1 square meter (1,550 square inches)
- (c) includes portable inflatable pools and portable plastic pools
- (d) excludes a hydro massage pool or hot tub equipped with a functioning lockable cover

**“Temporary Pool Enclosure”** means a pool enclosure that is not permanent but is required for restricting unauthorized access to a pool installation site during the construction phase and is subject to the approval of the Officer:

- (a) maintain a minimum 1.22 meters (48 inches) high mesh fence
- (b) having a mesh not greater than 38 millimeters (1.5 inches) with a steel T-bar support post every 3 meters (118 inches) maximum horizontal distance and a 9 gauge galvanized steel wire located at the top and the bottom of such fence; or
- (c) is constructed of material that will provide an equivalent degree of safety and has been approved by the Officer.

**“Town”** means The Corporation of the Town of Amherstburg or the geographic area of the Town of Amherstburg;

**“Uniform Colour / Appearance”** means one or two complimentary colour tones typical for a fence that are not fluorescent, not graffiti, or create an unusual appearance

**“Unsafe condition”** means any condition related to a fence, temporary pool enclosure or pool enclosure that could cause undue hazard to the health or safety of any person, authorized or unauthorized on or about a property.

**“Visibility Triangle”** means an area created by measuring 3 meters (9.8-feet) in each direction from where two streets intersect and then closing off the triangle by joining the two lines at the 3 meter points

**“Yard”** shall mean land that is not a highway, including vacant lots or any part of a lot, which is not beneath a building and for the purpose of this by-law includes unenclosed

decks, unenclosed porches, balconies, patios, unenclosed carports and unenclosed garages accessory to a residential use, and<sup>1</sup> shall also include front, side and rear yard.

- (i) "Front Yard" means a yard extending across the full width of a lot between the front lot line of such lot and the nearest part of any building, structure or excavation on such lot.
- (ii) "Side Yard" means a yard extending from the front yard to the rear yard of a lot and from the side lot line of such lot to the nearest part of any building, structure or excavation on such lot.
- (iii) "Rear Yard" means a yard extending across the full width of a lot between the rear lot line of such lot, or, where there is no rear lot line, the junction point of the side lot lines, and the nearest part of any building, structure or excavation on such lot.

## **Part 2 – Regulations for Residential Lots**

**2.1** That no person on a residential lot shall erect or maintain any fence in a defined yard unless it is in accordance with the following provisions:

**(a)** In a front yard the maximum height shall not exceed 0.9 meters (3-feet) above grade save and except for a corner lot where the maximum height shall not exceed 0.6 meters (2-feet)

**(b)** In a side yard or rear yard, the maximum height shall not exceed 2 meters (6 feet 6 inches)

**(c)** No fence post(s) exceed the maximum height of 0.2 meters (8-inches) over **2.1 (b)**

**2.2** No person on a residential lot shall erect or maintain a gate for a fence that exceeds the maximum height of 2 meters (6-feet 6-inches) save an except if there is a decorative gate feature that projects no more than an additional 0.6 meters (2-feet)

**2.3** No person on a residential lot shall erect or maintain a hazardous fence

**2.4** No person on a residential lot shall erect or maintain a fence on a highway

**2.5** No person on a residential lot shall erect or maintain privacy screen that exceeds a maximum height as set out in **2.1 (a)** and **2.1 (b)**

**2.6** No person on a residential lot shall erect or maintain a fence that is not of uniform colour

## **Part 3 – Regulations for All Lots**

**3.1** No person on any lot shall erect or maintain a sign on a fence unless it is an acceptable sign

**3.2** No person on any lot shall erect or maintain a fence that is not in good repair

**3.3** No person on any lot shall erect or maintain a fence on public property without authorization from the Town

**3.4** No person on any lot shall erect or maintain a fence that creates an unsafe condition

**3.5** No person on any lot shall erect or maintain a fence within a visibility triangle

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## **Part 4 – Regulations for Swimming Pools**

**4.1** No person shall construct or erect or cause to construct or cause to erect a swimming pool, in-ground or above without first obtaining a pool enclosure permit from the Chief Building Official. The only pools that are excluded are portable inflatable pools or portable plastic pools as deemed by an Officer.

**4.2** No person shall construct or erect or cause to construct or cause to erect a swimming pool, in-ground or above without a temporary pool enclosure that was approved by an Officer.

**4.3** No person shall fail to maintain a temporary pool enclosure as defined in this By-law when required unless excluded in **4.4 (b)**

**4.4** No person shall maintain any swimming pool without a pool enclosure when required and as defined in this By-law unless it is:

(a) a hot tub equipped with a lockable cover

(b) an above ground pool where the wall sections are at least 1.22 meters (48 inches) in height and there is nothing climbable (excluding pool pump hoses) placed within 1 meter (39.4 inches) of the pool wall.

**4.5** No person shall maintain a pool enclosure that is, climbable.

**4.6** No person shall maintain an unoccupied hot tub unless it is, covered with a lockable cover.

**4.7** No person shall fail to equip a pool enclosure gate without self-closing and/or self-latching hardware as defined by this By-law

**4.8** No person shall maintain a self-latching device at a height less than 119 centimeters (47 inches) from the ground

**4.9** No person shall maintain a pool enclosure gate with malfunctioning self-closing and/or self-latching hardware.

**4.10** No person shall maintain a self-latching device on the wrong side of the pool enclosure gate.

**4.11** No person shall fail to maintain a pool enclosure in good repair

**4.12** No person shall erect or maintain a pool enclosure that is a hazardous fence

**4.13** No person shall erect or maintain a pool enclosure that creates an unsafe condition

## **Part 5 - Administration and Enforcement**

**5.1** The Manager of Licensing and Enforcement and appointed Officers are responsible for enforcing this By-law.

### **Where Notice is Required**

**5.2** The Manager or an Officer may, by a notice delivered by personal service to the owner or property, or by a notice sent by prepaid mail to the owner of property, or by a notice posted on the property, or by a notice published once in a local newspaper of general circulation, or by any combination of the above as the Manager or Officer deems necessary, require the owner or occupant, as the case may be, within seven (7) days of the notice being served

- a) Repair, alter or remove a fence that does not comply with this By-law
- b) Repair, alter or remove a gate that does not comply with this By-law
- c) Remove a sign from a fence that does not comply with this By-law

### **Where No Notice is Required**

5.3 Where the condition of the fence is such that it constitutes a hazard to members of the public, the Manager or Designated is, authorized to follow the provisions of Part 5.8 of the By-law, without having first issued the Notice.

#### **Receipt of Notice**

5.4 Where the Order to Comply is, sent by prepaid mail in accordance with Part 5.6 of the By-law, it is deemed to have been served on the fifth day after mailing.

#### **Property Identification**

5.5 Every notice delivered, sent, posted or published shall identify the property by street number and name, and/or legal description.

#### **Source of Mailing Address**

5.6 Every notice to an owner that is sent shall be sent to the address shown on the last revised assessment roll and may also be sent to the last address known to the Town of the owner if it differs from that on the roll.

#### **Inclusion**

5.7 Every notice delivered, sent, posted or published shall specify that if the owner defaults in doing the thing(s) required to be done under this by-law by the timeline specified in the notice, the Manager/Officer may take action to cause the Town to do the thing(s) required to be done as specified in the notice and that the Town may recover the costs of doing the thing(s) required to be done from the owner and that the Town may recover the costs by action or by adding the costs to the tax roll and collect them in the same manner as taxes.

#### **Non-Compliance with Notice**

5.8 If an owner or occupant, as the case may be, fails to comply with a notice issued under Part 5.1, the Manager/Officer may take action to do the thing(s) required to be done as specified in the notice.

#### **Recovery of Expense**

5.9 If the Town takes action to do the thing(s) required to be done as specified in the notice, the costs of such action may be added to the tax roll and collected in the same manner as taxes.

#### **Entry onto Property**

5.10 For purposes of entering onto property to determine if a violation exist with the terms of this by-law, the Manager or an Officer may enter onto any public or private property.

#### **Entry to Inspect**

5.11 For the purposes of inspecting a property to determine compliance with the terms of this by-law, the Manager or an Officer may enter onto any public or private property.

#### **Entry to Remedy**

**5.12** Where the Town proceeds with action under Part 5.7 of this by-law, the Manager or an Officer or an agent appointed by the Town may enter onto the property accompanied by any person(s) under his or her direction and with the appropriate equipment as required to bring the property into compliance with this by-law.

#### **Non-Obstruction of Town Employee or Agent**

**5.13** Non-Obstruction of Town Employee or Agent, no person shall hinder or obstruct an Officer/Manager employed to enforce this by-law from carrying out an inspection of lands nor shall any person obstruct any employee or agent authorized by the Town to carry out any work under authority of this by-law.

#### **Part 6 - Penalties**

**6.1** Each person who contravenes any provision of this By-law is guilty of an offence.

**6.2** A person convicted of an offence contrary to a provision of this By-law in a proceeding commenced under Part III of the Provincial Offences Act, R.S.O. 1990, c. P.33, is liable to a fine of no less than Five Hundred Dollars (\$500) and no more than Ten Thousand Dollars (\$10,000) for each day or part of a day on which the offence occurs or continues provided that the total of all daily fines for the continuing offence shall not exceed One Hundred Thousand Dollars (\$100,000).

**6.3** A person convicted of an offence contrary to a provision of this By-law in a proceeding commenced under Part I of the Provincial Offences Act, R.S.O. 1990, c. P.33, is guilty of an offence and on conviction is liable to a fine as provided in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.

#### **Part 7 - Severability**

**7.1** Where a Court of competent jurisdiction declares any section or part of a section of this By-law invalid, the remainder of this By-law shall continue in force unless the Court makes an Order to the contrary.

#### **Part 8 – Repeal & Enactment**

##### **8.1 Repeal of Previous By-Laws**

Except as provided by Part 8.2 hereof, the following by-laws are hereby repealed;

- a) 2002-84, (b) 2007-92 and (c) 2005-21

##### **8.2 Transition**

Notwithstanding Part 6.1 hereof, the provisions of the by-laws contained in Part 6.1 shall continue to apply to any properties or persons in respect of which enforcement action has commenced under those by-laws until such action has been concluded.



**8.3 Effective Date**

This by-law shall come into force and take effect on the day of the final passing thereof.

  
ALDO DICARLO, MAYOR

  
VALERIE CRITCHLEY, CLERK

First Reading – March 14, 2022

Second Reading – March 14, 2022

Third Reading – March 14, 2022