

# THE CORPORATION OF THE TOWNSHIP OF WILMOT

## BY-LAW NO. 2009-36

### A BY-LAW TO REGULATE FENCES WITHIN THE TOWNSHIP OF WILMOT

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

**NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WILMOT ENACTS AS FOLLOWS:**

1. **Short Title**

1.1 This by-law, and any amendments, may be cited as the "Fence By-law".

2. **Definitions**

2.1 "Chief Building Official" means such Chief Building Official as may be appointed by Council, and certified as such by the Clerk of the Township.

2.2 "Corner Visibility Triangle" means the triangular space formed by joining the point on each property line established by measuring 7.5m in each direction along the property lines abutting a street or streets from the point where said property lines intersect.

2.3 "Driveway Visibility Triangle" means the triangular space formed by joining the point on a property line and driveway established by measuring 4.5m in each direction along the property line abutting a street and along a driveway from the point where said property line and driveway intersect.

2.4 "Exterior Side Yard" means a yard immediately adjoining a public street, extending from the front yard to the rear yard and from the side lot line of the lot to the nearest part of the main building on the lot.

2.5 "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 Zoning By-law.

2.6 "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.

2.7 "Front Yard" means a yard extending across the full width of a lot between the front lot line of the lot and the nearest part of the main building on the lot. The front lot line is the shortest property line abutting a street.

2.8 "Height" means the vertical distance from the base of the fence at grade to the top of the fence including fence posts.

2.9 "Pool" shall mean a "Privately Owned Outdoor Swimming Pool".

2.10 "Privately Owned Outdoor Swimming Pool" means any body of water located outdoors on, above, or below privately owned property contained by artificial means and used or maintained for the purpose of swimming, wading, diving, or bathing and which has a design depth of 0.91m or greater.

- 2.11 "Rear Yard" means a yard extending across the full width of the lot between the rear lot line of the lot and the nearest point of the building on the lot.
- 2.12 "Side Yard" means any yard extending from the front yard to the rear yard and from the side lot line of the lot to the nearest part of the main building on the lot.
- 2.13 "Township" means the Corporation of the Township of Wilmot.

### **3. General Provisions for Fences**

#### **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;
- c) may be electrified so as to provide electric shock to humans or animals;
- d) be located within 2.0m from a fire hydrant, except that a fence may be located no closer than 1.0m from the rear of a fire hydrant as viewed from the centre of a municipal road allowance;
- e) exceed 1.98m in height within a exterior side yard, side yard, or rear yard;
- f) exceed 0.76m 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 1.98m;
- g) 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;
- 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 2.59m 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 0.6m 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 Except for fences described in Section 4 of this by-law to enclose a pool, fences may be erected without a permit, but shall comply with this by-law.

### **4. Privately Owned Outdoor Swimming Pools**

4.1 No privately owned outdoor swimming pool shall be constructed, used, or maintained unless a permit for said pool has been issued by the Chief Building Official.

4.2 No person shall excavate for, install, construct or erect a swimming pool without a work permit issued by the Township Public Works Department should access be required to or across publically owned lands.

4.3 Every person, in making an application for a permit to construct, use, or maintain a pool shall file with the Chief Building Official materials required by the Building By-law including plans identifying all fences and gates as required by this by-law.

4.4 No person shall place water in a pool or allow water to remain there unless the fences and gates prescribed by this by-law have been erected to the satisfaction of the Township.

- 4.5 No pool shall be constructed, used, or maintained unless a fence is erected and maintained around such pool. Such fence shall be a minimum height of 1.52m and shall have a gate or gates equipped with a lock or locks.
- 4.6 No gate shall be left unlocked unless a responsible adult is present and supervising the pool.
- 4.7 Every gate or gates required in Section 4.5 of this by-law shall be equipped with a self-closing and latching device.
- 4.8 Every fence required by this by-law shall be constructed so that all exterior members are vertical or that the fence shall be chain link with a size of 5.0cm link or less.
- 4.9 The provisions of this section with regard to fences shall apply to all pools regardless of the date of the construction of such pools.
- 4.10 Notwithstanding any other provisions of this by-law, a structure known as a "hot tub" or "swim spa" shall be exempt from the provisions of this Section provided that the structure is adequately secured by a cover equipped with a locking device and which cover shall be kept locked in place over the hot tub or swim spa when the hot tub or swim spa is not in use.
- 4.11 For the purposes of Section 4.10, a cover shall comply with American Society for Testing Materials (ASTM) Standard F1346, clauses 9.1, 9.2, and 9.4, or other standard, to the satisfaction of the Chief Building Official, that demonstrates that the cover will inhibit access unless a responsible adult is present and supervising the hot tub or swim spa.

## **5. Fencing of Construction Sites**

- 5.1 Construction sites shall be fenced in accordance with Section 9 of the Building By-law or any successor thereof as may be amended from time to time.

## **6. Minor Variances**

- 6.1 The Committee of Adjustment of the Township is hereby appointed to review and consider applications for minor variances from the provisions of this by-law provided that in the opinion of the Committee of Adjustment the general intent and purpose of this by-law is maintained.
- 6.2 The Committee of Adjustment may refuse an application or provide relieve as it considers appropriate either absolutely or subject to conditions.
- 6.3 The Committee of Adjustment is directed to follow its usual procedure on such applications, so far as may be practical.
- 6.4 Decisions of the Committee of Adjustment may be appealed to Council who will consider the appeal in the context of a comprehensive amendment to this by-law.

## **7. Exemptions**

- 7.1 Notwithstanding the provisions of this by-law, the Township or any local board or commission thereof, Regional Municipality of Waterloo, the Government of Canada, the Government of Ontario, including the Hydro One Networks Inc., Kitchener-Wilmot Hydro Inc. or any such other local delegate, and any telecommunications company may, for public services purposes, construct or erect any fence on its lands within the Township provided, however, that the said fence shall be in substantial compliance with the regulations prescribed in this by-law to the maximum extent possible and provided that said fence fully complies with the provisions of Section 3.1(c) and 3.1(f) hereof.

- 7.2 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 Township 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.
- 7.3 Notwithstanding the provisions of this by-law, nothing shall prevent the construction or maintenance of a farm fence provided, however, that said fence does not exceed a height of 0.75m if located within a corner visibility triangle, and provided said fence fully complies with the provisions of Section 3.1(f) hereof.

## 8. Penalty

- 8.1 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.
- 8.2 Where anything required to be done in accordance with this by-law is not done, the Township or a person or persons designated by the Township 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.

## 9. Severability

- 9.1 If any Section or Sections of this By-law or parts of it are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts of it shall be deemed to be severable and all other Sections or parts of this By-law shall be deemed to be separate and independent and shall continue in full force.

## 10. Repeal

- 10.1 Township of Wilmot By-law 2002-56 is hereby repealed.

READ a first and second time on the 14<sup>th</sup> day of **September, 2009**.

READ a third time and finally passed in Open Council on the 14<sup>th</sup> day of **September, 2009**.

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MAYOR

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CLERK

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2009-36

PART I PROVINCIAL OFFENCES ACT

TITLE: FENCE BY-LAW

COLUMN 1		COLUMN 2	COLUMN 3
SHORT FORM WORDING		PROVISION CREATING OR DEFINING OFFENCE	SET FINE
1	Constructing or Using a Pool without a permit.	4.1	\$105.00
2	Placing water in a pool without the prescribed fence or gates.	4.4	\$105.00
3	Using a pool without the prescribed fence or gates.	4.5	\$105.00

Note: the general penalty provision for the offences listed above is Section 8.1 of By-law 2009-36, a certified copy of which has been filed.