

THE CORPORATION OF THE CITY OF WELLAND

BY-LAW NUMBER 2022-82

A BY-LAW TO REGULATE FENCES IN THE CITY OF WELLAND AND TO REPEAL BY-LAW 10545 AS AMENDED

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, authorize the City of Welland to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 7 of subsection 11(3) authorizes by-laws respecting fences and signs;

AND WHEREAS section 391 (1) of the Municipal Act, 2001, c.25, as amended, provides that without limiting sections 9, 10 and 11, those sections authorize a Municipality to impose fees or charges on persons;

AND WHEREAS section 425 of the Municipal Act, 2001, c.25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS section 436 of the Municipal Act, 2001, c.25, as amended, provides that 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 amongst other things whether or not a by-law of the municipality is being complied with;

AND WHEREAS section 446 of the Municipal Act, 2001, c.25, as amended, authorizes, among other things, remedial action, entry onto land, recovery of costs and addition of costs to the tax roll;

AND WHEREAS section 434.1 of the Municipal Act, 2001, c.25, as amended, provides that a municipality may require a person 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;

AND WHEREAS section 434.2(1) and section 434.2(2) of the Municipal Act, 2001, c.25; as amended, provides that an administrative penalty imposed by a municipality on a person under section 434.1 constitutes a debt of the person to the municipality and may be collected in the same manner as municipal taxes;

NOW THEREFORE the Council of the Corporation of the City of Welland enacts as follows:

SECTION 1 – SHORT TITLE

1.1 This By-law may be referred to as The Fence By-law.

SECTION 2 – DEFINITIONS

For the purposes of this By-law all words shall have their normal and customary meaning save and except for those hereinafter defined:

- 2.1 “By-law Enforcement Officer” means a person appointed by The Corporation of the City of Welland for the purposes of enforcement of its By-laws.
- 2.2 “City of Welland” or “City” means The Corporation of the City of Welland.
- 2.3 “Exterior Side Lot Line” means a lot line other than a front or rear lot line and which abuts a highway.
- 2.4 “Fence” means a vertical structure of posts, wire, boards, rails, pickets, pilings, wood, metal, fiberglass, plastics, masonry, or similar materials of any combination thereof, but does not include an arbor or privacy screen.

- 2.5 "Front Lot Line" means, in the case of an interior lot, the line dividing the lot or parcel from the highway. In the case of a corner lot, the shorter lot line abutting a highway shall be deemed to be the front lot line and the longer lot line abutting a highway shall be deemed to be the exterior side lot line. In the case of a through lot, or a corner lot whose exterior lot lines are the same length, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.
- 2.6 "Front Yard" means a yard extending across the full width of the lot between the front lot line of the lot and the nearest part of any building or structure on the lot.
- 2.7 "Height" means the vertical distance measured from grade level at the base of a fence or privacy screen to the highest point of the fence or privacy screen.
- 2.8 "Highway" includes a common and public highway, street, avenue, lane, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 2.9 "Interior Side Lot Line" means a lot line other than a front, rear or exterior lot line.
- 2.10 "Lot Line" means any boundary of a lot or parcel.
- 2.11 "Owner" means the registered owner(s) of the property and includes a corporation or other entity.
- 2.12 "Person" means an owner, individual, corporation or other entity.
- 2.13 "Privacy Screen" means a decorative wall designed to provide privacy for a patio, deck, balcony, or part of a yard.
- 2.14 "Rear Lot Line" means the lot line farthest from and opposite to the front lot line.
- 2.15 "Required Front Yard" means the minimum yard required by the City of Welland Comprehensive Zoning By-law 2017-117, as amended or any variances approved by the Committee of Adjustment.
- 2.16 "Snow Fence" means a light fence of lath and wire.
- 2.17 "Street Line" means the edge of the travelled portion of the highway.
- 2.18 "Through Lot" means an interior lot that abuts more than one highway.
- 2.19 "Visibility Triangle" means an area on a corner lot within the triangular space formed by the street lines and a line drawn from a point in one street line to a point in the other street line, each such point being six (6) meters measured along the street line from the point of intersection of the street lines.
- 2.20 "Zone" means any land use zone established in the zoning by-laws of City of Welland, as amended.

SECTION 3 – GENERAL PROVISIONS APPLICABLE TO ALL FENCES AND HEDGES

- 3.1 No person shall erect or maintain a fence on any highway in the City of Welland unless the said fence is authorized by the Council of the City of Welland by way of an Encroachment Agreement with the City of Welland.
- 3.2 No person shall erect or maintain a fence in a ruinous or dilapidated state and which is, in the opinion of the By-law Enforcement Officer, unsafe.
- 3.3 No person shall erect or maintain any fence or hedge in a visibility triangle which is more than 1 metre in height, save and except for an open wire fence which does not obstruct vision through the said fence.
- 3.4 No person shall erect or maintain a fence composed wholly or partially of used vehicle tires, railway ties, plywood, scrap metal or other like material.
- 3.5 Fences shall be maintained in good repair, free from broken components.

- 3.6 Fences shall be maintained free from hazards, including protruding nails, screws and staples.
- 3.7 Fences shall be maintained in a vertical condition, unless specifically designed to be other than vertical.
- 3.8 No person shall erect or maintain a snow fence except from November 1 to April 30 of any year.

SECTION 4 – GENERAL PROVISIONS APPLICABLE TO ALL PRIVACY SCREENS

- 4.1 No person shall erect or maintain a privacy screen that does not comply with the provisions of the City of Welland Comprehensive Zoning By-law 2017-117, as amended.
- 4.2 No person shall erect or maintain a privacy screen in a ruinous or dilapidated state and which is, in the opinion of the By-law Enforcement Officer, unsafe.
- 4.3 No person shall erect or maintain a privacy screen composed wholly or partially of used vehicle tires, railway ties, plywood, scrap metal or other like material.
- 4.4 Privacy screens shall be maintained in good repair, free from broken components.
- 4.5 Privacy screens shall be maintained free from hazards, including protruding nails, screws and staples.
- 4.6 Privacy screens shall be maintained in a vertical condition, unless specifically designed to be other than vertical.

SECTION 5 – FENCE IN RESIDENTIAL ZONE

- 5.1 No person shall erect or maintain a fence adjacent to or on a rear lot line, an interior side lot line or an exterior side lot line which exceeds 2.5 metres in height.
- 5.2 Notwithstanding the foregoing, no person shall erect a fence in a required front yard which exceeds 1 metre in height.
- 5.3 No person shall erect a fence adjacent to or on a front lot line which exceeds 1 metre in height.
- 5.4 No person shall use barbed wire or barbed material on any fence nor erect an electric fence in any residential zone.

SECTION 6 – FENCE IN NON-RESIDENTIAL ZONE

- 6.1 No person shall erect or maintain a fence adjacent to or on a rear lot line, an interior side lot line, an exterior side lot line or a front line which exceeds 2.5 metres in height.
- 6.2 No person shall erect or maintain a fence constructed in whole or in part of barbed wire or other barbed materials except along the top of a fence and except that the barbed wire or barbed material is at least 1.8 metres above the adjacent ground level.
- 6.3 Notwithstanding the foregoing, a fence, constructed in whole or in part of barbed wire or barbed material, may be erected and maintained in an agricultural and rural zones.
- 6.4 No person shall erect or maintain an electric fence, except in an area zoned Agricultural.

SECTION 7 – WORK ORDER

- 7.1 Where a By-law Enforcement Officer is satisfied that a person has failed to comply with any provision of this By-law, the By-law Enforcement Officer may issue an Order requiring the owner of the subject property to correct the contravention.

7.2 An Order shall set out:

- (a) The municipal address and/ or the legal description of the property;
- (b) Reasonable particulars of the contravention adequate to identify the contravention;
- (c) The date by which there must be compliance with the order.

7.3 Every owner who contravenes an order is guilty of an offence.

7.4 Any order issued under this by-law may be given by ordinary mail, registered mail or hand delivered to the address of the owner according to the last revised assessment roll of the subject property or the notice may be posted at the subject property, and such service shall be deemed good and sufficient service. Where an Order is mailed, the Order shall be deemed delivered on the fifth (5th) day following the date of mailing, whether actually received or not.

7.5 Every owner shall comply with any order issued under the authority of this by-law.

7.6 Where the owner is in default of an order, the By-law Enforcement Officer may, without notice and in addition to any other action, cause the work to be done at the owners expense. Without limitation, the City, its employees, agent or contractor may enter upon the land and remove such things or carry out the work required to make the property comply with this By-law. The City's rights pursuant to this section are in addition to the penalty provisions contained in section 9 and the City shall have the option to exercise the rights contained herein as well as the rights contained in section 9.

7.7 Where any of the matters or things are done in accordance with Subsection 7.6, the expense of having the thing done shall be recovered in a like manner as municipal taxes, in accordance with Section 446 of the Act.

SECTION 8 – ADMINISTRATION, ENFORCEMENT AND RIGHT OF ACCESS

8.1 This By-law shall be administered and enforced by the City, the By-law Enforcement Officer or anyone appointed or otherwise delegated the authority of administration and enforcement.

8.2 If there is a conflict between a provision of this By-law and a provision of any other City By-law, the provision in this By-law shall apply.

8.3 It is hereby declared that notwithstanding that any part of this By-law, or parts thereof, may be found by any Court of law to be invalid or beyond the power of Council to enact such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this By-law are separate and independent there from and enacted as such.

8.4 Pursuant to the provisions of Sections 23.1 to 23.5 of the Municipal Act, 2001 the Clerk of the City of Welland is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this By-law as may be necessary after the passage of this By-law.

8.5 A By-law Enforcement Officer designated to perform inspections pursuant to this by-law may at all reasonable times, enter upon any land for the purpose of carrying out an inspection to determine whether or not this By-law is being contravened and/ or to determine if an order has been complied with.

8.6 A By-law Enforcement Officer may, for the purposes of the inspection under section 8.5, alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

8.7 Any cost incurred by the City in exercising its authority to inspect under section 8.6, including but not limited to the cost of examination, test, sample or photograph necessary for the inspection, shall be paid by the owner of the property where the inspection takes place.

- 8.8 The By-law Enforcement Officer shall have inspection powers described in Section 436 of Act.
- 8.9 No person shall obstruct or hinder, or attempt to obstruct or hinder, a By-law Enforcement Officer, in the exercise of a power or the performance of a duty under this by-law.
- 8.10 No person shall refuse to produce any documents or things required by a By-law Enforcement Officer and every person shall assist any entry, inspection, examination, or inquiry by a By-law Enforcement Officer.
- 8.11 No person shall knowingly furnish false information in any form to the By-law Enforcement Officer with respect to this by-law.

SECTION 9 – PENALTY

- 9.1 Any person who contravenes any provision of this By-law is guilty of an offence.
- 9.2 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 more than Ten Thousand Dollars (\$10,000.00).
- 9.3 Administrative Penalty By-law 2019-134 applies to each administrative penalty issued pursuant to this By-law.
- 9.4 Any person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty By-law 2019-134, be liable to pay to the City an administrative penalty in accordance with the penalties set out in Schedule “A” attached.

SECTION 10 – TRANSITION, REPEAL, FORCE AND EFFECT

- 10.1 By-law 10545, as amended, is repealed as of the day this By-law comes into force and effect.
- 10.2 This By-law comes into force and effect on the date of its passing.

SECTION 11 – EXEMPTIONS

- 11.1 The provisions of this By-law shall not apply to the following public agencies:
- a) The City of Welland
 - b) The Regional Municipality of Niagara
 - c) Any Department of Ministry of Federal or Provincial Government
 - d) Ontario Hydro
 - e) Welland Hydro
 - f) District School Board of Niagara
 - g) Niagara Catholic District School Board
 - h) Conseil Scolaire Viamonde
 - i) Conseil Scolaire Catholique Mon Avenir
- 11.2 Section 5 and Section 6 of this By-law shall not apply to a fence:
- (a) erected under a site plan agreement, a subdivision agreement or another City by-law;
 - (b) erected as a noise attenuation barrier under a site plan agreement, a subdivision agreement or another City by-law
 - (c) erected to protect an excavation, construction site, or any emergency or hazardous area;
 - (d) erected in accordance with a variance having been previously granted pursuant to the provisions of the Planning Act, R.S.O. 1990, c. P. 13;

11.3 Waterpoint Condos - Prince Charles Drive/Noise Barrier

Notwithstanding the provision of Section 5 of this By-law, a fence/noise barrier, not exceeding 2 metres in height, may be erected in the required front yard of lands described as Part of Lot 27, Concession 6 former Township of Crowland, now City of Welland, designated as Parts 1 to 8 inclusive on Reference Plan 59R-5824 and known municipally as Waterpoint Condos.

11.4 Towpath Village/Entrance Gates/Quaker Road and Hansler Road

a) Notwithstanding the provision of Section 5 of this By-law, a fence/entrance gate may be erected in a front yard on the private lots on the east and west side of St. Lawrence Drive immediately abutting Quaker Road so long as the said gates do not exceed 2 metres in height to the top of the fence and not exceeding 2.4 metres in height to the top of any post or pillar.

b) Notwithstanding the provision of Section 5 of this By-law, a fence/entrance gate, may be erected in the front yard on private lands on the lots on the north and south side of St. Lawrence Drive, immediately abutting Hansler Road so long as the said gates do not exceed 1.9 metres in height to the top of the fence and not exceed 2.15 metres in height to the top of any pillar or post.

11.5 85 Aqueduct Street

Notwithstanding the provision of Section 3.3 of this By-law, the existing hedge located on lands known municipally as 85 Aqueduct Street on the west side of Aqueduct Street and the north side of Elizabeth Street is permitted to have a visibility triangle defined to points 3.6 metres measured along the street lines rather than 6.0 metres.

11.6 709 Niagara Street

Notwithstanding the provisions of Section 6.1 of this by-law, a 10 metre long sound barrier fence is permitted to be erected to a height of 3.5 metres, and a 16 metre long sound barrier fence is permitted to be erected to a height of 4.0 metres, both such fences to be located on the lands known municipally as 709 Niagara Street, in accordance with an Environmental Noise Analysis prepared by Valcoustics dated June 11, 2002.

SECTION 12 – MINOR VARIANCES

12.1 Any person may make application to the Committee of Adjustment to request consideration of a variance from the provisions of this by-law. Such application shall be made on the forms provided by the City of Welland Planning Division and accompanied by the fee for minor variance as prescribed in the Fees and Charges By-law.

READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS

3rd DAY OF May, 2022.


MAYOR


CLERK

SCHEDULE "A"

SCHEDULE "C" – Pages 23-24

THE CORPORATION OF THE CITY OF WELLAND

ADMINISTRATIVE PENALTY BY-LAW 2019-134

SET FINE SCHEDULE

**TO THE FENCE BY-LAW 2022-82, BEING A BY-LAW TO
REGULATE FENCES WITHIN THE CITY OF WELLAND**

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provisions Creating or Defining Offence	COLUMN 3 Penalty
1.	Erect or maintain a fence/ hedge on any highway	Sec. 3.1	\$400.00
2.	Erect or maintain a fence in a ruinous or dilapidated state	Sec. 3.2	\$400.00
3.	Erect or maintain any fence or hedge in a visibility triangle which is more than 1m in height	Sec. 3.3	\$400.00
4.	Erect or maintain fence with prohibited materials	Sec. 3.4	\$400.00
5.	Fail to maintain fence in good repair, free from broken components	Sec. 3.5	\$400.00
6.	Fail to maintain fence free from hazards, including protruding nails, screws and staples	Sec. 3.6	\$400.00
7.	Fail to maintain fence in vertical condition	Sec. 3.7	\$400.00
8.	Erect or maintain a snow fence during prohibited time of year	Sec 3.8	\$400.00
8.	Erect or maintain a privacy screen not in compliance with the City of Welland Zoning By-law.	Sec. 4.1	\$400.00

9.	Erect or maintain a privacy screen in a ruinous or dilapidated state	Sec. 4.2	\$400.00
10.	Erect or maintain a privacy screen with prohibited materials	Sec. 4.3	\$400.00
11.	Fail to maintain privacy screen in good repair, free from broken components	Sec. 4.4	\$400.00
12.	Fail to maintain privacy screen free from hazards, including protruding nails, screws and staples	Sec. 4.5	\$400.00
13.	Fail to maintain privacy screen in vertical condition	Sec. 4.6	\$400.00
14.	Erect or maintain fence which exceeds 2.5m in height in a residential zone	Sec. 5.1	\$400.00
15.	Erect a fence in a required front yard which exceeds 1m in height in a residential zone	Sec. 5.2	\$400.00
16.	Erect a fence adjacent to or on a front lot line which exceeds 1m in height in a residential zone	Sec. 5.3	\$400.00
17.	Use barbed wire or barbed material on a fence	Sec. 5.4	\$500.00
18.	Erect an electric fence in a residential zone	Sec. 5.4	\$500.00
19.	Erect or maintain a fence which exceeds 2.5 metres in height in a non-residential zone	Sec. 6.1	\$400.00
20.	Use barbed wire or barbed material on a fence that is not 1.8 metres above the adjacent ground level	Sec. 6.2	\$500.00
21.	Erect an electric fence in a non-residential zone	Sec. 6.4	\$500.00
22.	Fail to comply with an order	Sec. 7.5	\$500.00
23.	Obstruction	Sec. 8.9	\$400.00
24.	Fail to produce any documents or things required by a By-law Officer	Sec. 8.10	\$400.00
25.	Furnish false information to a By-law Officer	Sec. 8.11	\$400.00