

**THE CORPORATION OF THE MUNICIPALITY OF THAMES CENTRE**

**BY-LAW NO. 49-2019**

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**Being a By-law to prescribe the heights, locations and description of lawful fences within the Municipality of Thames Centre**

**FENCE BY-LAW**

**WHEREAS** pursuant to Section 11(3) of the Municipal Act, 2001, S.O. 2001, Chapter 25, the municipality may enact by-laws to regulate fences;

**AND WHEREAS** the Council of the Municipality of Thames Centre deems it expedient and in the best interests of its residents to prescribe the heights, locations and description of lawful fences;

**AND WHEREAS** the Council of the Municipality of Thames Centre deems it expedient and in the best interests of its ratepayers to regulate fences regarding privately owned outdoor swimming pools;

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

**AND WHEREAS** the Municipal Act, 2001 further authorizes the Municipality of Thames Centre, amongst 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;

**NOW THEREFORE** the Council of the Municipality of Thames Centre enacts as follows:

**1. SHORT TITLE**

1.1 This By-law shall be cited as the "Fence By-law"

**2. DEFINITIONS**

2.1 "Boundary Fence" means any fence erected within 50 mm (two inches) of a property line.

2.2 "Grade Level" means the grade level of the centre of the travelled portion of any roadway.

2.3 "Intersection" means the area embraced within the prolongation or connection of the lateral boundary lines of the roadway of two or more roads which join one another at an angle, whether or not one highway crosses the other.

2.4 "Front Yard, Rear Yard, Side Yard and Exterior and Interior Yard" shall be as defined in municipality's Zoning By-law.

2.5 "Fence" means any fence, wall (other than a wall of a building) privacy screen or gate which separates or divides any parcel of land or part thereof from any other parcel of land or part thereof immediately adjacent to, which is erected and maintained in accordance with the provisions of this by-law.

2.6 "Municipality" means the Municipality of Thames Centre.

2.7 "Officer" means a By-law Enforcement Officer, Building Inspector or Chief Building Official as appointed by the Council of the municipality.

- 2.8 "Pool Enclosure" means the required barrier to restrict access to the swimming pool area or yard and may include, but not limited to a fence, gate, building or door.
- 2.9 "Privately owned outdoor swimming pool" means any swimming pool located on private property under control of the owner or occupant the use of which is limited to swimming or bathing by members of their family or visitors.
- 2.10 "Self-Closing device" means a mechanical device or spring which returns a gate to its closed position immediately after opening.
- 2.11 "Self-Latching Device" Means a mechanical device or latch which is engaged each time the gate it secures is closed; a self-latching device must not allow the gate to be opened by pushing or pulling, it must remain closed until unlatched by lifting or turning the device itself either directly or by a key.
- 2.12 "Site Visibility Triangle" shall be as defined in the municipality's zoning by-law, and shall be in accordance with the Section 6, General Provisions of the municipality's zoning by-law.
- 2.13 "Swimming Pool" means any structure, basin, chamber or tank containing or capable of containing an artificial body of water for swimming, diving or recreational bathing.
- 2.14 "Zoning By-law" means the Municipality of Thames Centre Comprehensive Zoning By-law currently in effect.

### **3. GENERAL PROVISIONS**

- 3.1 The provisions of this by-law are to be enforced by an Officer.
- 3.2 No person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence that does not comply with the provisions of this by-law.
- 3.3 With the exception of Section 6 - Swimming Pool Fencing Requirements, of this by-law, this by-law shall not apply to agricultural uses.
- 3.4 No person shall, without having authority so to do, erect, construct or maintain on or upon any street or highway in the municipality any fence, pole, post, pillar or wire or other construction.
- 3.5 No person shall construct a gate within a boundary fence without the written consent of the owner of the neighbouring property.
- 3.6 No fence of a height which is greater than 0.762 metres (30 inches) above the grade level of any adjacent roadway shall be erected or caused to be erected or maintained or caused to be maintained within any required sight visibility triangles.
- 3.7 No fence of a height which is greater than 1.22 metres (48 inches) above the adjoining ground level shall be erected or cause to be erected or maintained or cause to be maintained in any front yard or exterior side yard.
- 3.8 No fence of a height which is greater than 2.13 metres (84 inches) above the adjoining ground level shall be erected or cause to be erected or maintained or cause to be maintained in any rear yard or interior side yard.
- 3.9 Notwithstanding the provisions of Sections 3.4, 3.5 and 3.6 a fence may have a greater height if constructed in accordance with a registered agreement or agreements entered into with the municipality pursuant to Sections 41 and 51 of the Planning Act RSO.1990 c. P13. as amended, or any plan approved by the municipality in accordance with that section provided that in the event of a conflict between this subsection and any such agreement or approved plan, the provisions of the agreement will prevail.

**4. FENCE LOCATION (Prohibition of Sandwich Fencing)**

- 4.1 No fence may be located closer than 0.6 metres (2 feet) from any other fence.
- 4.2 Except for a boundary fence, no fence shall be closer to any property line than the minimum accessory building setback of that particular zone within the zoning by-law.

**5. FENCE MATERIALS AND MAINTENANCE**

- 5.1 Except as permitted by Section 5.2, no fence shall be constructed of sheet metal or corrugated metal, electric fencing or barbed/razor/page wire or any other type of wire.
- 5.2 Barbed wire fencing may be permitted within the following limits;
  - 5.2.1 on the top of a fence on a lot used for commercial or industrial purposes, provided that the barbed wire is a minimum of 2.0 metres above the adjacent finished ground and projects inwards towards the area enclosed by the fence; or
  - 5.2.2 on the top of a fence erected for security reasons enclosing a facility owned or operated by any level of government or a means provider, provided that the barbed wire is a minimum of 2.0 metres above the adjacent finished ground and projects inwards towards the area enclosed by the fence.
- 5.3 Each of the owners of adjoining occupied lands shall repair, replace or maintain a just proportion of any boundary fence.

**6. SWIMMING POOL FENCING REQUIREMENTS**

- 6.1 No person shall keep a privately owned outdoor swimming pool in the municipality unless such pool or the land or a part of the land on which such pool is located is effectively fenced and/or enclosed in accordance with the following provisions:
  - 6.1.1 Every fence shall be not less than 1.22 metres (48 inches) in height.
  - 6.1.2 Every fence shall be so constructed as not to have openings, holes or gaps larger than four inches in its horizontal dimension, except lattice-type and chain link fences, which openings shall not exceed four square inches.
  - 6.1.3 Every fence shall be so constructed that all horizontal or diagonal structural members of the fence shall be located on the inside or pool side of the fence a minimum of 0.76 metres (30 inches) apart.
  - 6.1.4 Every fence shall be so constructed that it cannot be used in a manner similar to a ladder.
  - 6.1.5 A dwelling, house, building or accessory building may be utilized to effectively enclose any pool.
  - 6.1.6 Every fence shall be so constructed so as to have as the only means of entry by gates or doors.
  - 6.1.7 With the exception of the door of any dwelling or house which forms a part of the enclosure, all gates or doors shall be equipped with a self-closing device and a self-latching device on the pool side at the top of the gate to the intent that all gates or doors will remain securely closed when not in actual use.

- 6.2 All gates shall comply with sections 6.1.1- 6.1.4
- 6.3 A boundary fence which complies with the provisions of this section shall be deemed a sufficient fence, provided boundary fence complies with all of section 6.1
- 6.4 Except for outdoor swimming pools that contain 24 inches of water or less, the provisions of this by-law shall apply to all privately own outdoor swimming pools regardless of the date of construction of such swimming pool.
- 6.5 No person shall excavate for or erect or use a swimming pool without first having obtained a swimming pool fence permit issued by the Municipality.
- 6.6 No person shall place water in a pool or allow water to remain there unless a pool enclosure, meeting the requirements of this bylaw, has been erected to the satisfaction of the municipality.
- 6.7 No person shall allow a pool enclosure, to be removed, destroyed, dilapidated or become in a state where it does not perform its intended purpose.
- 6.8 Pools shall be permanently fenced in accordance with the above regulations within seven days of being filled with water.

## **7. ENFORCEMENT**

- 7.1 Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act R.S.O. 1990 c.P.33, as may be amended or replaced, or as set out in Schedule A "Set Fines" to this By-law.
- 7.2 The provisions of this By-law shall be enforced by an Officer. No person shall hinder or obstruct or attempt to hinder or obstruct, either directly or indirectly, a By-law Officer, or any other person appointed for the purpose of enforcing this by-law.
- 7.3 If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the lot on which the contravention occurred to discontinue the contravening activity.
- 7.4 If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the lot which the contravention occurred to do work to correct the contravention.
- 7.5 Where anything required or directed by an Officer to be done in accordance with this by-law is not done, an Officer may upon such notice as he/she deems suitable, do such thing at the expense of the person required to do it, and in so doing may charge an administration fee as outlined within the municipality's current Fee By-law as a continued non-compliance inspection fee. Both the expense and fee may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.
- 7.6 Where the municipality proceeds pursuant to section 7.4 of this by-law, an Officer and/or any person under his or her direction, may enter onto the land and, with the appropriate equipment as required, bring the property into compliance with this by-law.
- 7.7 An Officer may enter on a lot at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- 7.7.1 this By-law;
  - 7.7.2 a direction or order made under this By-law; or
  - 7.7.3 a prohibition order made under s. 431 of the Municipal Act, 2001.
- 7.8 An Officer may, for the purposes of the inspection under subsection 7.6:
- 7.8.1 require the production for inspection of documents or things relevant to the inspection;
  - 7.8.2 inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - 7.8.3 require information in writing or otherwise as required by the officer from any person concerning a matter related to the inspection; or
  - 7.8.4 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.
- 7.9 An officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the Municipal Act, 2001 where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections 7.5 and 7.6.
- 7.10 Except as provided in section 7.10 of this by-law, the owner/owners of any fence in existence at the date of the final passing of this by-law shall not be deemed in violation of the provisions of this by-law.
- 7.11 Section 6 of this by-law shall apply to all existing fences enclosing swimming pools.
- 7.12 Every person shall comply with an Order issued under the authority of this by-law.

## **8. SEVERABILITY**

- 9.1 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the by-law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.

## **9. REPEALED BY-LAWS & FORCE IN EFFECT**

- 9.1 By-law 106-2001 passed by the Council of the Municipality of Thames Centre on the 22<sup>nd</sup> day of October, 2001, be and is hereby repealed upon final approval of the applicable set fines and short form wordings for this by-law by the Chief Judge of the Ontario Court (Provisional Division).
- 9.2 The provisions of this By-law shall come into force and take effect on the date of approval of the applicable set fines and short form wordings for this by-law by the Chief Judge of the Ontario Court (Provisional Division).

**READ** a **FIRST, SECOND** time this 27<sup>th</sup> day of May, 2019.

**READ** a **THIRD** time and **FINALLY PASSED** this 27<sup>th</sup> day of May, 2019.

Original signed by:

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Mayor, A. Warwick

Original signed by:

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Clerk, T. Michiels

**SCHEDULE "A"**

**MUNICIPALITY OF THAMES CENTRE  
PART 1 Provincial Offences Act  
By-law 49-2019: Fence By-law**

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision creating or defining offence</b>	<b>COLUMN 3 Set Fine</b>
1.	Construct or use a Pool without a permit.	6.5	\$125
2.	Place water in a pool without the prescribed Pool Enclosure	6.6	\$125
3.	Fail to maintain Pool Enclosure.	6.7	\$125

Note: the general penalty provision for the offences listed above is Section 7.1 of By-Law 49-2019, a certified copy of which has been filed.