

**THE CORPORATION OF THE TOWNSHIP OF PELEE
BY-LAW 2012-17**

WHEREAS Sections 98(5) of the *Municipal Act, S.O. 2001, c.25*, as amended, authorizes municipalities to pass by-laws respecting fences which includes the authority to prescribe the height and description of fences and to require owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools;

NOW THEREFORE, the Council of the Corporation of the Township of Pelee enacts as follows:

PART 1

INTERPRETATION

1.1 In This by-law;

- (1) **“building”** shall mean any structure greater than 108 square feet, whether temporary or permanent, used or intended for sheltering any use or occupancy but shall not include a fence, travel trailer, camping trailer, truck camper, motor home or tent;
- (2) **“Chief Building Official”** shall mean the officer or employee of the Township charged with the duty of enforcing the provisions of the Ontario Building Code Act and the provisions of this By-law;
- (3) **“corner lot”** shall mean a lot situated at the intersection of or abutting upon, two or more streets provided that the angle of intersection of such streets is not more than one hundred and thirty-five (135) degrees and each of which is at least 30 feet wide; where such intersecting sides are curved, the angle of intersection of the adjacent sides shall be deemed to be the angle formed by the intersection of the tangents to the street lines, drawn through the extremities of the front lot line and the exterior lot line;
- (4) **“Council”** shall mean the Council of the Corporation of the Township of Pelee
- (5) **“dwelling”** shall mean a building, occupied or designed to be occupied, exclusively as a home, residence or sleeping place by one or more persons;
- (6) **“fence”** shall mean a railing, wall, line of posts, wire, gate, boards, pickets, or other similar substances, used to enclose or divide in whole or in part a yard or other land or to provide privacy;
- (7) **“front yard”** shall mean that part of any lot extending across the full width of the lot and lying between the street and the nearest wall of any dwelling or other main building located on the lot;
- (8) **“gate”** shall include a door or other device constructed to be self-closing and with a self-latching device that may be opened to gain access to an area enclosed by a fence;
- (9) **“hedge”** shall mean a continuous line of thick shrubs or low trees, planted so as to form a fence;
- (10) **“height shall mean”** the vertical distance between the grade level adjacent to the fence and the highest point of the fence without taking into account fence posts;
- (11) **“lot”** shall mean any parcel or tract of land described in a deed or other instrument legally capable of conveying land;
- (12) **“open type construction”** means a fence constructed so that at least one half of

its vertical surface area is open space, enabling a clear view through such fence, including materials such as wrought iron and chain link;

- (13) "**owner**" shall include any person who has lawful possession of any lands or premises;
- (14) "**permit**" shall mean a permit issued by the Chief Building Official certifying approval of plans for swimming pool fences;
- (15) "**person**" shall mean a person, firm or corporation, or any group or association of persons;
- (16) "**privacy screen**: means a visual barrier used to shield any part of a yard from view from any adjacent lot, but does not include a fence as defined as herein;
- (17) "**rear yard**" shall mean that part of any lot extending across the full width of the lot and lying between the rear boundary of the lot and the nearest wall of any dwelling or other main building located on the lot;
- (18) "**side yard**" shall mean that part of any lot that is not part of the front yard or rear yard lying between the side lot line and any dwelling or other main building located on the lot;
- (19) "**sight visibility triangle**" means the triangular space included between the street lines for a distance of 30 feet from the point of intersection or 15 feet where an alley intersects another alley or where an alley intersects a street;
- (20) "**street**" shall mean a common and public street, road, highway or commons vested in the municipality, the county, the province or any other public authority having jurisdiction over the same and includes a bridge or other structure forming part of a street on, over or across which a street passes, including a private road or alley;
- (21) "**swimming pool**" shall mean any manmade structure that may be used to contain water for the purpose of swimming, wading or bathing purposes but shall not include a manmade pond;
 - (a) Irrigation lagoon that is used for agricultural purposes;
 - (b) A temporary excavation below the water table; or
 - (c) A portable wading pool that is emptied after each use
- (22) "**swimming pool fence**" shall mean any fence that encloses in whole or in part a swimming pool, and includes any temporary enclosure erected during the construction of any swimming pool and includes a gate attached to the fence;
- (23) "**temporary enclosure**" shall mean a device that is intended to temporarily perform the functions of a fence, and is subject to the approval of the Chief Building Official;
- (24) "**through lot**" shall mean a lot that is not a corner lot and has frontage on more than one street, in which case, the front yard requirements contained herein shall apply on each street;
- (25) "**Town**" shall mean the Corporation of the Township of Pelee;
- (26) "**waterway**" shall mean a natural or manmade channel, body or stream of water;
- (27) "**zone**" shall mean an area as delineated on a zoning map schedule and established and designated by any by-law passed under Section 34(1) of the *Planning Act, R.S.O. 1990, c.P13*.

PART II

GENERAL

- 2.1 No person shall erect or cause to be erected a swimming pool fence without first obtaining a permit from the Chief Building Official and the charge for such permit shall be in accordance with the Fees By-law as amended.
- 2.2 No person shall construct or reconstruct or cause to be constructed or reconstructed any fence that is not in compliance with this by-law.
- 2.3 No person shall use or cause to be used razor wire, barbed wire or any other similar material in the construction of any fence unless specifically permitted by this by-law.
- 2.4 No person shall use, or cause to be used, electric current as a part or in conjunction with any fence unless specifically permitted by this by-law.
- 2.5 No person shall post or exhibit placards, playbills, posters or graffiti on any fence.
- 2.6 No person shall erect a fence that is not uniform in appearance on each side.

PART III

GENERAL PROVISIONS-RESIDENTIAL ZONES

- 3.1 (1) No person shall construct, erect, maintain or permit to be constructed, erected or maintained on any property zoned Residential, a fence which exceeds a height of 6 feet in any rear yard, interior or exterior side yard.
 - (2) No person shall construct, erect, maintain, or permit to be constructed, erected or maintained on any property zoned Residential, a fence which exceeds a height of 3 feet in any designated front yard.
 - (3) Notwithstanding Sections 3.1(1) and 3.1(2) above, fences shall be required to comply with all sight visibility triangle regulations as set out in this by-law.
 - (4) No fence shall be constructed in a manner such that the vertical boards are less than 3.5 inches wide, greater than 5.5 inches wide or spaced more than 1.5 inches apart.
 - (5) Subsection 3.1(4) shall not apply to fences constructed of masonry or wrought iron or to hedges.
- 3.2 Notwithstanding Section 3.1, but subject to the provisions for Residential zones along a waterway in this Part and sight visibility triangles in Section 6.3 of this by-law;
 - (a) Archways forming part of an entrance may exceed the height restrictions to

- a maximum of 7 feet 6 inches;
 - (b) Decorative items on structural posts may exceed the prescribed height restrictions to a maximum of 6 inches;
 - (c) A fence may be erected to enclose a tennis court or similar private sports facility, not including a pool that is
 - i. No higher than 12 feet;
 - ii. Constructed of chain link with adequate posts, support wires and bracing of a corrosive resistant or treated material; and is
 - iii. Not closer than 2 feet to any property line; and
 - (d) A boundary fence in side yards or rear yards may be 7 feet in height provided any portion of the fence over 6 feet is of open type construction.
- 3.3 In a residential zone used for multiple attached dwelling units, privacy screens are permitted when erected upon a deck or platform in a rear yard which is permitted provided:
- (a) The maximum height of the privacy screen shall be 6 feet measured from the floor of the deck;
 - (b) The maximum projection of a privacy screen or fence from the building shall be 12 feet;
 - (c) The privacy screen shall be set back at least 3 feet from any property line other than a property line which is an extension of a common wall between two dwelling units; and
 - (d) No privacy screen on a corner lot shall be closer to the street than the portion of the building nearest the street.

SWIMMING POOL FENCES

- 3.4 Every owner of a lot on which a swimming pool is located shall construct and maintain, or cause to be constructed and maintained, a swimming pool fence.
- 3.5 Every person who constructs, or causes to be constructed, a swimming pool fence shall construct the swimming pool fence so as to prevent access under, over or through the fence except by way of a gate.
- 3.6 No person shall construct or cause to be constructed a swimming pool fence, unless such swimming pool fence complies with the following regulations:
- (a) The minimum permitted height of a swimming pool fence shall be 4 feet as measured from the grade level outside and immediately adjacent the swimming pool fence.
 - (b) The maximum permitted height of a swimming pool fence shall be 6 feet;
 - (c) Every swimming pool fence shall be constructed so that all horizontal or diagonal structural members of the fence are located on the pool side of the fence and the swimming pool fence shall not have openings, holes or gaps large enough to facilitate climbing;

- (d) If a swimming pool fence is to be constructed of chain link material, the chain link material shall have an open diamond mesh not exceeding 1.5 inches;
- (e) A dwelling or building may be utilized as part of a swimming pool fence;
- (f) Every swimming pool fence opening shall be secured with a gate;
- (g) Every gate shall be equipped with a self-closing device and a self-latching device on the swimming pool side of the top of the gate to the intent that all gates will remain securely closed;
- (h) Paragraph (g) shall not apply to the door of any dwelling or building which forms part of the enclosure;
- (i) Every swimming pool fence shall be not less than 3 feet from the swimming pool;
- (j) Nothing shall be placed at or near the exterior side of a fence located within the same property so that it might facilitate the climbing of the swimming pool fence;
- (k) Sun-decks or walkways may be used as part of a swimming pool fence provided that they are constructed so as not to facilitate climbing and are a minimum of 4 feet above the immediately adjacent grade level and if equipped with a gate, such gate shall be constructed in accordance with these regulations;
- (l) Once a swimming pool is filled with water it must be fenced. A temporary enclosure is permitted in lieu of a swimming pool fence, but must be replaced with a swimming pool fence within fourteen (14) days of the pool being filled with water.

3.7 Every owner of a lot containing a swimming pool shall ensure that the gate providing access through the swimming pool fence is locked whenever the swimming pool is not in use.

3.8 The provisions of this by-law requiring the erection of a fence shall not apply to an above ground pool that complies with the following standards;

- (a) Sides of not less than 4 feet above grade; and
- (b) The point where a user of the above ground pool gains access to the pool is protected by a gate.

RESIDENTIAL ZONES ALONG A WATERWAY

3.9 On lots abutting a waterway, no person shall construct, or cause to be constructed

- (a) A fence that exceeds 3 feet in height in any front yard;
- (b) A fence that exceeds 6 feet in height in any side yard; or
- (c) A fence in any rear yard except in compliance with the following height regulations, in order to preserve a view of the waterway;
 - i. If the average distance between the rear wall of the dwelling or other main building and the waterway is less than or equal to 50 feet, the height of any fence shall not exceed 6 feet for a distance not exceeding one-half of the distance between the

corners of the rear wall of the dwelling or other main building and the waterway measured parallel to the side lot lines; and the height of any fence beyond the one-half distance shall not exceed 4 feet and shall be of an open type construction;

- ii. If the average distance between the rear wall of the dwelling or the other main building and waterway is greater than 50 feet, the height of any fence shall not exceed 6 feet for a distance not exceeding 25 feet and the height of any fence beyond a maximum distance of 25 feet shall not exceed 4 feet and shall be of an open type construction.

3.10 On lots abutting a waterway, every swimming pool fence must comply with Section 3.6 of this by-law.

3.11 On lots abutting a waterway, the portion of the property open to the waterway is Permitted to be unfenced provided that there is no gap between the swimming Pool fence and the said waterway or a break wall.

3.12 On lots abutting a waterway, a hedge in the rear yard shall be deemed to be a Fence.

PART IV

GENERAL PROVISIONS-COMMERCIAL/INDUSTRIAL/INSTITUTIONAL ZONES

4.1 Unless permitted by a site plan agreement or any other development agreement executed by the Township, a fence on any property zoned Commercial, Industrial Institutional shall not exceed 8 feet in height.

4.2 Barbed wire may be placed on the top of a fence on any property zoned commercial, Industrial or Institutional that does not abut a residential zone, provided that the said fence is a minimum of 6 feet in height.

PART V

GENERAL PROVISIONS – AGRICULTURAL ZONE

5.1 Properties in an Agricultural zone that include a residential use shall comply with all other parts of this by-law as they apply to properties in a Residential Zone.

5.2 Barbed wire may be used in the construction of a fence on any property zoned Agricultural that does not abut a residential zone.

5.3 An electrified fence may be erected on any property zoned Agricultural 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 approximate 100 foot intervals, a sign warning that the fence carries electricity.

PART VI

HEIGHT CALCULATIONS

- 6.1 The height of a fence at any given point shall be measured from the grade at the base of the fence, the height of the fence is deemed to be the average height of the fence over any 8 foot portion.
- (a) Where changes in grade contours along the fence line result in changes in height of the fence, the height of the fence is deemed to be the average height of the fence over any 8 foot portion.

GRADE DIFFERENCED BETWEEN LOTS

- 6.2 Where grade elevations of adjacent lots differ, the height of any boundary fence shall be measured from the mean grade elevation between the lots.

SIGHT VISIBILITY TRIANGLES – DRIVEWAYS AND CORNER LOTS

- 6.3 No person shall erect a fence or keep any hedge in any zone greater than 3 feet in height at any point:
- (a) Within a 30 foot sight visibility triangle, measured along the property line at the intersection of any two streets or at the intersection of two parts of the same street meeting at an angle of not more than 135 degrees;
 - (b) Within a 6 foot sight visibility triangle measured at the intersection of any driveway and the property line of any street.

PART VII

VARIANCES

- 7.1 Any person, being the occupier or owner of land in the Township, may apply to the Chief Building Official for permission to exceed any of the requirements set out in this By-law, and if the Chief Building Official is satisfied that the proposed application is reasonable and does not contravene the purpose and intent of the provisions of this by-law, then the Chief Building Official may grant such permission, in whole or in part, conditionally or unconditionally, as deemed advisable.
- 7.2 Any person who has made application pursuant to the provisions of Section 7.1 of this by-law and who has received notice of the decision of the Chief Building Official shall have the right to appeal to the Committee of Adjustment for the Township.
- 7.3 This By-law is designated under *Section 45(3) of the Planning Act, R.S.O. 1990, c.P.13.* as amended, as a by-law implementing the Official Plan of the

Township of Pelee the Committee of Adjustment for the Township is empowered to grant variances from the provisions of this By-law.

PENALTY

- 7.4 Every person who contravenes any of the provisions of this by-law is guilty of an offence and shall, upon conviction thereof, pay a fine as provided for in the *Provincial Offences Act. R.S.O 1990 c.P33*, as amended, exclusive of costs.


SEVERABILITY

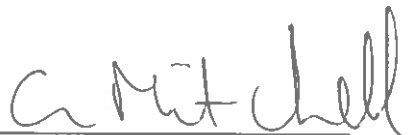
- 7.5 Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the said section shall not affect the validity of this by-law as a whole or any part thereof, other than the part so declared to be invalid.

MISCELLANEOUS

- 7.6 This by-law shall be deemed to have come into force and take effect on the date of the final passing thereof.
- 7.7 All by-laws regulating fences and/or swimming pool fences passed under the *Municipal Act. S.O. 2001, c.25*, as amended, by the former Township of Pelee are hereby repealed.
- 7.8 All owners of lots containing a swimming pool must comply with the provisions of this by-law. Swimming pool fences erected prior to this by-law coming into effect shall not be considered lawful unless they conform to this by-law. All other legal fences erected prior to this by-law coming into force are deemed to be lawful fences.

This by-law was read a first, second and third time and finally passed this day
2012.


MAYOR


CAO