

**THE CORPORATION OF THE
TOWNSHIP OF SOUTH GLENGARRY
BY-LAW 13-2020
FOR THE YEAR 2020**

BEING A BY-LAW TO REGULATE FENCES

WHEREAS, the *Municipal Act, 2001*, c.25 S 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act, 2001*, c. 25 S. 5(3) provides that the powers of every council are to be exercised by by-law.

AND WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25 (hereinafter referred to as the "*Municipal Act*") provides that the powers of a municipality under the *Municipal Act* or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS Section 11 (3) of the *Municipal Act*, as amended, authorizes a municipality to pass a By-law respecting structures including fences;

AND WHEREAS Section 9 of the *Municipal Act* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act* or any other Act;

AND WHEREAS pursuant to Section 425 of the *Municipal Act*, a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;

AND WHEREAS pursuant to Section 426 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 pursuant to Section 436 of the *Municipal Act*, a By-Law Enforcement Officer may enter upon any land at any reasonable time for the purpose of carrying out an inspection to determine compliance with this by-law;

AND WHEREAS pursuant to Section 446(1) of the *Municipal Act*, a municipality may direct or require a person to do a matter or thing and 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;

AND WHEREAS pursuant to Section 446(3) of the *Municipal Act*, a municipality may recover the costs of doing a matter or thing under subsection (1) from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

NOW THEREFORE the council of the Corporation of the Township of South Glengarry hereby enacts the following as a by-law;

SHORT TITLE

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

PART 1 - DEFINITIONS

1.1 In this by-law;

- a) "Agricultural Fence" means a fence located on a property zoned Rural (RU) or Agricultural (AG) as per the Township's Comprehensive Zoning By-Law used for agricultural purposes.
- b) "Building" means a structure, whether permanent or temporary, consisting of a wall, roof, and floor, or any of them.
- c) "Manager" means the Township's Manager of Municipal Law Enforcement and his or her designate or successor;
- d) "Farm" means an agricultural operation as defined in the Farming and Food Production Protection Act, 1998 and includes such an operation that is not carried on with the expectation of gain but otherwise meets the definition in that Act;
- e) "Fence" includes:
 - i. a railing, wall, line of posts, wire, gate, boards, pickets, latticework, natural stone fence, or any combination thereof, or other similar erection used for the purposes of enclosing or dividing in whole or in part a lot, safeguarding, retaining, or establishing a lot line or providing privacy (this does not include a hedge);
 - ii. a see-through screen erected to contain a recreational activity such as a chain-link fence erected around a tennis court;
 - iii. a Privacy screen means a solid wall at least 2.6m in height located on a deck, designed to conceal a portion of the lot from the public.
- f) "Height", unless otherwise defined in this By-law, means the vertical distance measured between the finished ground adjacent to a fence and the highest point of the fence, provided that where a fence is located on top of a retaining wall, "height" means the vertical distance measured between the top of the retaining wall and the highest point of the fence;
- g) "Lot" means a parcel of land which can be legally conveyed pursuant to the provisions of the Planning Act;
- h) "Lot line" means the boundary of a lot including the vertical projection thereof;
- i) "Maintain" includes "have", "construct" or "repair";
- j) "Officer" means an officer of the Township of South Glengarry responsible for enforcement of by-laws.
- k) "Residential Use" means any property lawfully used for primary or seasonal human habitation that contains a dwelling, including a single detached, a semi-detached or multi residential as approved by the Township's Comprehensive Zoning By-Law but does not include an agricultural use.
- l) "Township" means the Township of South Glengarry
- m) "Zone" means any land use zone established in the Comprehensive Zoning By-Law of the Township and passed under the Planning Act or any predecessor or successor Act.

PART 2 - GENERAL FENCE PROVISIONS

2.1 No person shall have, erect, construct, maintain the following:

- a) snow fencing as part or in place of fencing, unless said fencing is used to temporarily control snow, used to temporarily control a crowd, and or, to protect property undergoing construction for which an approved Township permit is in effect. Such snow fencing shall be removed upon completion of construction;
- b) a fence comprised of sheet metal or corrugated metal panel members;
- c) a fence that contains or is constructed of any hazardous material such as razor wire or barbed wire.
- d) a fence that contains any other sharp projections capable of causing physical injury to humans;
- e) a fence or any attachment to a fence which may be used as a conductor of an electrical current.
- f) a fence that uses materials not usually intended for use in permanent fencing, unless specifically permitted by this By-law or any other Township By-law (i.e. tires or corrugated plastic);
- g) a gate within a portion of a fence that abuts land owned by the Township; and
- h) a fence on any lands owned by the Township, or on a highway, or road allowance opened or unopened, or Township right-of-way, or Township easement;

2.2 Notwithstanding Subsection 2.1 c), the use of barbed wire or other barbed or sharp materials fencing shall only be permitted:

- a) On agriculturally zoned lands which necessarily require the use of barbed wire on fences as a part of active agricultural activity;
- b) For fences located in an industrial zone and provided that such materials are used at a height of at least 2.4 m (8 ft) above the finished grade. The barbed wire shall project inwards to the area enclosed by the fence; and on top of a fence erected for security purposes, around any facility owned, operated or maintained by a municipal, provincial or federal government or their respective agencies or a utility provider.

2.3 Notwithstanding Subsection 2.1 e), a fence or any attachment to a fence may be used as a conductor of an electrical current on properties which necessarily require such fence as part of active agricultural activity.

PART 3 – FENCES IN RESIDENTIAL AND RURAL ZONES WITH A RESIDENTIAL USE

3.1 No person shall have, erect, construct, maintain a fence on a lot in a residential or rural zone with a residential use, except in accordance with the following regulations:

Fences in Rear and Side Yards

- a) The maximum height of a fence in a rear or side yard shall be 2.0 m.
- b) Notwithstanding Section 3.1 a), in the case of a corner lot where a rear yard abuts a front yard of an adjacent lot the maximum height of a fence shall be 1 m in height.

Fences in Front Yards and Exterior Side Yards

- c) The maximum height of a fence located in a front or exterior side yard shall be 1m.

3.2 Where a fence located on a property in a residential or rural zone with a residential use which abuts a property in a non-residential zone, the non-residential fence height provisions will apply to the portion of the fence abutting the non-residential property.

Entranceways/Ornamental Gateways

3.3 Section 3.1 c) does not apply to the erection of an ornamental gateway, entranceway or similar structure located in a residential or rural zone.

Pool Enclosures

3.4 Where a fence is located on a property for the purposes of enclosing an above ground pool, in-ground pool, artificial pond, hot tub or other similar bodies of water, it shall be in compliance with the Township's Pool Enclosure By-Law.

PART 4 – FENCES IN NON-RESIDENTIAL ZONES

4.1 No Person shall have, erect, construct, or maintain a fence on a lot in a non-residential zone which for the purposes of this By-law includes; commercial, industrial, institutional, and open space zones, except in accordance with the following regulations:

- a) The maximum height of a fence located in a non-residential zone shall be 3.0 m.
- b) Notwithstanding subsection 4.1a), the maximum height of a fence located within a 6.0 m setback of the front property line shall be 1.2 m.
- c) The maximum height of a fence that encloses a sports field or court shall be 4.25 m.

PART 5 - EXISTING FENCES

5.1 Despite the provisions of this By-law, a fence that was in existence prior to the date this By-law comes into force, and was in compliance with the applicable fence regulations in force under the Township's applicable by-laws at the time the fence came into existence, shall be deemed to comply with this By-law for so long as such fence continues to be the same height, length and width and comprised of the same material.

PART 6 - PRIVACY SCREENS

6.1 No Person shall have, erect, construct, or maintain a privacy screen except in accordance with the following regulations:

- a) where a privacy screen is located on a raised deck or platform it shall be less than 2.6m in height.

PART 7 - CONSTRUCTION AND MAINTENANCE

Restrictions

7.1 Every fence or privacy screen, shall be designed and installed in such a manner as to meet its intended function.

7.2 All surfaces (fence or privacy screen) that have been previously painted, stained, varnished or which have received other similar protective finishes shall be maintained without visible deterioration.

7.3 Every fence or privacy screen shall be maintained in a structurally sound condition and in good repair.

7.4 Every fence or privacy screen must not present an unsightly appearance to the neighbouring environment.

Graffiti

7.5 No Person shall place graffiti or cause or permit graffiti to be placed on any fence or privacy screen.

7.6 Every owner shall at all times maintain their fence or privacy screen free of graffiti.

Temporary Fencing - Unsafe

7.7 Where, in the opinion of the Manager, a property contains an unsafe situation or hazard to the public the Manager may require the owner to erect such fencing as the Manager deems appropriate to the circumstance.

PART 8 - ADMINISTRATION AND ENFORCEMENT

8.1 This by-law shall be enforced on a basis of written complaints, unless the Manager is aware of an obvious unsafe condition warranting correction.

8.2 The Manager will not inspect the entire premises or suite but will inspect only those items which are the subject of the written complaint.

8.3 Notwithstanding 8.2, the Manager may inspect other areas or items believed to be unsafe.

8.4 The Manager is authorized to administer and enforce this By-law including but not limited to:

- a) arranging for:
 - i. the assistance or work of Township staff, or Township agents;
 - ii. the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - iii. the obtaining of court orders or warrants as may be required;
 - iv. the commencement of such actions on behalf of the Township to recover costs or restrain contravention of this By-law as deemed necessary; and
 - b) prescribing the format and content of any forms or other documents required under this By-law.
- 8.5** The Manager may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- a) carry out inspections;
 - b) make orders or other requirements as authorized under this By-law; and
 - c) give immediate effect to any orders or other requirements made under this By-law.

8.6 The Manager may assign duties or delegate tasks under this By-law to be carried out in the Manager's absence or otherwise.

Entry and Inspections

- 8.7** An Officer may enter on land at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- a) this By-law;
 - b) a direction or order made under this By-law;
 - c) an order made under s. 431 of the *Municipal Act, 2001*.
- 8.8** An Officer may, for the purposes of the inspection under Section 8.7 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*:
- a) require the production for inspection of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information in writing or otherwise as required by the Officer from any person concerning a matter related to the inspection; or
 - d) 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.
- 8.9** 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*, in accordance with the conditions set out in that section, where he or she has been prevented or is likely to be prevented from carrying out an inspection under Sections 8.7 and 8.8.
- 8.10** No Person shall interfere with or obstruct an Officer while performing their duties under this by-law.

Orders including Delivery

- 8.11** 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 occupier of the property on which the contravention occurred to do work to correct the contravention.
- 8.12** An order under Section 8.11 shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - b) the work to be completed;
 - c) the date or dates by which the work must be completed; and
 - d) notice that if the order is not complied with, then the work may be done at the expense of the owner.
- 8.13** Delivery of an order to discontinue a contravening activity made under Section 8.11 or an order to do work made under Section 8.12 may be given personally or by registered mail to the last known address of:
- a) the owner; and
 - b) such other persons affected by the order as an Officer determines.
- Delivery by registered mail shall be deemed to have taken place five days after the date of mailing.
- 8.14** In addition to delivery in accordance with Section 8.13, an order to discontinue contravening activity made under Section 8.11 or an order to do work made under Section 8.8 may be delivered by an Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

- 8.15** Where a time frame is set out in an order for carrying out any action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.

Township Carrying Out Work

- 8.16** Where a person does not comply with a direction or a requirement within an order, under this By-law to do a matter or thing, the Manager, with such assistance by others as may be required, may carry out such direction or requirement at the person's expense.
- 8.17** The Township may recover the costs of doing a matter or thing under Section 8.16 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an administration fee of 30 per cent (30%). The amount of the Township's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

Penalties

- 8.18** Every person who contravenes any provision of this by-law is guilty of an offence and, upon conviction, is liable to:
- a) a set fine as set out in Schedule "A"; or
 - b) a fine as provided for in section 61 of the Provincial Offences Act, R.S.O 1990, c. P.33.
- 8.19** Where a person is convicted of an offence under this by-law, the Ontario court of Justice or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, make an order prohibiting the continuation or repetition of the offence by the person convicted.

Validity and Severability

- 8.20** 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.
- 8.21** Where a provision of this by-law conflicts with the provision of another by-law in force within the Township, the provisions that establish the higher standards to protect the health, safety and welfare of the general public shall prevail.
- 8.22** This By-law shall come into force upon the date of passing by Council.

READ A FIRST AND SECOND TIME THIS 6TH DAY OF APRIL 2020.

READ A THIRD TIME, PASSED, SIGNED AND SEALED IN OPEN COUNCIL THIS 20TH DAY OF APRIL, 2020.

MAYOR:

CLERK:

SCHEDULE 'A'
CORPORATION OF THE TOWNSHIP OF SOUTH GLENGARRY
Set Fine Schedule
Part 1 Provincial Offences Act
By-Law No.13-2020: Fence By-law

Item	Short Form Wording	Provision Creating or Defining of Offence	Set Fine
1	Failed to remove temporary snow fence.	2.1a)	\$150.00
2	Erect fence with sheet metal.	2.1b)	\$150.00
3	Erect fence with corrugated metal panels.	2.1b)	\$150.00
4	Erect fence with hazardous material.	2.1c)	\$150.00
5	Erect fence with electrical current.	2.1e)	\$150.00
6	Erect fence with material not usually intended for use in permanent fencing.	2.1f)	\$150.00
7	Erect fence on lands owned by Township.	2.1h)	\$150.00
8	Erect fence in residential or rural zone with a residential use exceeding 2.0m in height.	3.1a)	\$150.00
9	Erect fence in front or exterior side yard in residential or rural zone with a residential use exceeding 1m in height.	3.1c)	\$150.00
10	Erect fence in non-residential zone exceeding 3m in height.	4.1a)	\$150.00
11	Erect fence in non-residential zones exceeding 1.2m in height within the setback.	4.1b)	\$150.00
12	Erect privacy screen on property other than on a deck.	6.1	\$150.00
13	Erect privacy screen exceeding 2.6m in height.	6.1a)	\$150.00
14	Fail to maintain fence surfaces.	7.2	\$150.00
15	Failed to maintain fence in good repair.	7.3	\$150.00
16	Fail to erect temporary Security Fence.	7.7	\$150.00
17	Obstructing an Officer.	8.10	\$350.00

Note: The general penalty provision for the offences listed above is Section 8.18 of By-law no. 13-20 a certified copy of which has been filed.

SCHEDULE 'B'
CORPORATION OF THE TOWNSHIP OF SOUTH GLENGARRY
By-Law No. 13-2020: Fence By-law
Service Use and Activity Charges

Item	Service or Activity Fee	Fee
1.	1st Order Where the informal notice has not been complied with, for the first Order issued in respect to any property.	\$ 50.00
2.	Subsequent Orders Where there has been a previous Order issued, each subsequent Order issued thereafter.	\$ 350.00
6.	Inspections where Owner fails to comply with an Order Owner who failed to comply with a confirmed Order shall pay the fee for each inspection to determine if contraventions of this By-law observed on an initial inspection have been corrected where the contraventions have not been remedied by the time provided for in the said Order.	\$75.00 per inspection
10.	Township undertakes to complete the work Where the Township undertakes to complete the work required to comply with any final order.	Cost of the work performed plus an administrative fee of 30%
11.	Certificate of Compliance Where after inspecting a property, an Officer, may, or on the request of the Owner, issue the Owner a certificate of compliance.	\$25.00