

**THE CORPORATION OF THE CITY OF CLARENCE-ROCKLAND
BY-LAW 2016-96**

**BEING A BY-LAW TO PROVIDE FOR THE REGULATION OF FENCES
AND PRIVACY SCREENS**

WHEREAS paragraph 7 of Subsection 11(3) of the Municipal Act, 2001 states that a lower-tier municipality may pass by-laws subject to the rules set out under subsection (4), in regards to structures including fences and signs;

AND WHEREAS section 8(3) of the Municipal Act, 2001 authorizes a municipality to regulate or prohibit matters pertaining to fences and as a part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold or renewing the approval;

AND WHEREAS section 11(2)(6) of the Municipal Act authorizes a municipality to regulate matters related to health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS section 446 of the Municipal Act authorizes a municipality, under a by-law, to direct or require a person to do a matter or thing and the municipality may also provide 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 the municipality may recover the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS section 425 of the Municipal Act authorizes a municipality to pass a by-law providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS section 429 of the Municipal Act authorizes a municipality to establish a system of fines for the offences;

NOW THEREFORE the Council of the Corporation of the City of Clarence-Rockland enacts as follows:

1. DEFINITIONS

In this by-law,

"agricultural operation" means an agricultural, aquacultural, horticultural or silvacultural operation that is carried on in the expectation of gain or reward;

"building" means any structure used or intended for supporting or sheltering any use or occupancy;

"City" means Corporation of the City of Clarence-Rockland;

"City Engineer" means Director of the Infrastructure and Planning Department of the Corporation of the City of Clarence-Rockland for the time being or such other person or persons designated by him;

"collector roads" means the roads designated as collector on Schedule "B", to the Official Plan of the Urban Area of the City of Clarence-Rockland and Schedule "D" of the Official Plan of the United Counties of Prescott and Russell;

"corner lot" means a lot situated at the intersection of two or more roads or upon two parts of the same road having an angle of intersection not exceeding 135 degrees;

"Council" means the Council of the Corporation of the City of Clarence-Rockland;

"Director" means the person appointed as Director of the By-law Enforcement Division, or authorized delegate;

"erect" includes alter, construct, place, relocate and any work preparatory to erection and "erection" has a corresponding meaning;

"fence" means any freestanding structure, wall or barrier other than a building, erected at grade for the purpose of delineating the boundaries of a property, restricting ingress to or egress from a property, providing security or protection to property, and does include a hedge;

"gate" means any swinging or sliding barrier used to fill in or close an access in a fence;

"grade" means the elevation of the finished level of the ground adjoining the fence exclusive of any artificial embankments or berms;

"hedge" means a continuous line of thick shrubs or trees, which is densely planted and intended to be maintained at an even height;

"lot line, front " means,

- a. in the case of an interior lot, the lot line dividing the lot from the street,
- b. in the case of a corner lot, through lot, or through corner lot, the shortest of the lot lines that divide the lot from the road shall be deemed the front lot line,
- c. in the case of a corner lot, through lot, or through corner lot where such lot lines are of equal length, the City may deem any of the lot lines that divide the lot from the road as the front lot line;

"lot line, rear" means the lot line opposite to, and most distant from, the front lot line, but where the side lot lines intersect, as in the case of a triangular lot, the rear lot line shall be represented by the apex of the triangle formed by the intersection of the side lot lines;

"lot line, side" means a lot line other than a front lot line or a rear lot line;

"non-residential property" means land used for other than residential purposes and includes land used for both residential and other purposes;

"open construction" means construction of a fence that has an open vertical surface space, enabling a clear view through such fence;

"person" means an individual, firm, corporation, association or partnership;

"principal building" means the building in which the principal use of the lot is conducted;

"privacy screen" means a permanent structure that provides a screen or visual barrier to provide privacy;

"residential property" means land used for residential purposes and includes vacant land abutting residential property;

"road" means a public road or private road;

"sight triangle" means a triangular area on a lot formed by an intersecting exterior lot line and front lot line and a line drawn from a point on one line across such lot to a point on the other lot line, each such point being the required distance from the point of intersection of the two lot lines;

"yard" means any open space located between the nearest point of a building and a lot line;

"yard, front" means a yard extending across the full width of a lot between the front lot line and the nearest point of the principal building on the lot;

"yard, rear" means a yard extending across the full width of the lot between the rear lot line and the nearest point of the principal building on the lot; and

"yard, side" means a yard extending from the front yard to the rear yard between the side lot line and the nearest point of the principal building on the lot.

2. SEVERABILITY

It is declared that if any section, subsection or part, or parts thereof, be declared by any Court of Law to be bad, illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

3. CALCULATION OF HEIGHT

3.1 The height of a fence at any given point shall be measured from the grade at the base of the fence, as follows:

- a. to the top of the fence where erected at grade and where there is no grade difference between the two sides of the fence; or
- b. from the higher grade to the top of the fence where erected at grade and there is a grade difference between the two sides of the fence.

4. VISIBILITY TRIANGLES

4.1 In the case of a corner lot, no person shall erect a fence or cause a fence to be erected that is greater than seventy-five centimetres (75 cm) in height at any point within a visibility triangle formed by measuring six metres (6 m) along the lot lines from the intersection of any two roads or at the intersection of two parts of the same road meeting at an angle of not more than one hundred and thirty-five (135) degrees;

4.2 In the case of any lot, no person shall erect a fence or cause a fence to be erected that is greater than seventy-five centimetres (75 cm) in height within a visibility triangle formed by measuring two metres

(2 m) along the lot line and a driveway, a pedestrian walkway or a bicycle pathway, at the intersection of the driveway, walkway or pathway and the lot line abutting the road.

5. HEIGHT RESTRICTIONS - RESIDENTIAL PROPERTY

- 5.1 Subject to Section 4, on residential property no person shall erect a fence or cause a fence to be erected that is higher than,
- a. one metre (1 m) in height in a yard, front, and
 - b. two hundred and thirteen centimetres (213 cm) in height in any yard other than a yard, front.
- 5.2 Despite Section 5.1, in yards, side and yards, rear,
- a. gates may exceed the height restrictions by a maximum of thirty centimetres (30 cm),
 - b. archways forming part of an entrance may exceed the height restrictions to a maximum of two hundred and fifty centimetres (250 cm), and
 - c. decorative caps on structural posts may exceed the height restrictions to a maximum of fifteen centimetres (15 cm).
- 5.3 Despite Section 5.1, where a residential property abuts a collector road and where the grade level at the crown of the road is higher than the grade at the base of the fence, the maximum height restriction with respect to that portion of fence immediately contiguous to the highway shall be measured from the crown of the road to the top of the fence, but in no event shall such portion of the fence immediately contiguous to the road exceed a height of three metres (3 m) in a yard, rear or yard, side as measured from the base to the top of the fence.

6. HEIGHT RESTRICTIONS - NON-RESIDENTIAL PROPERTY

- 6.1 On non-residential properties, no person shall erect a fence or cause a fence to be erected that is higher than three metres (3 m).

7. HEIGHT RESTRICTIONS – PRIVACY SCREENS

- 7.1 In a residential zone, other than land used for multiple attached dwelling units (townhouses), a privacy screen may be erected in a rear yard or side yard, provided:

- a. the privacy screen is located at least 1 metre from any property line,
- b. the maximum height of the privacy screen shall be 2.0 metres (6 feet, 5 inches) plus an additional 0.3 metres (1 foot) in height for each additional 0.3 metres (1 foot) that the privacy screen is set back from the permitted minimum zone setback as established in the Zoning by-law, to a maximum height of:
 - i. 2.6 metres (8 feet 5 inches) if erected at ground level, or
 - ii. 2 metres (6 feet 5 inches) *above* a deck or platform if erected on the deck or platform (measured from the floor or the deck or platform),
- c. the portion of any privacy screen exceeding 2.44 metres (8 feet) in height as measured from the ground shall be of at least 40% open construction,
- d. no privacy screen on a corner lot shall be closer to the road than the portion of the main building nearest to the road, and
- e. no privacy screen shall exceed 9 metres (29 feet 5 inches) in length along any section of a fence or 12 metres (39 feet 25 inches) in total length;

7.2 In a residential zone used for multiple attached dwelling units (townhouses), privacy screens are not permitted, except upon a deck or platform in a rear yard provided:

- a. the maximum height of the privacy screen shall be 2 metres (6 feet 5 inches) measured from the floor of the deck or platform,
- b. the maximum projection of a privacy screen from the building shall be 3.66 metres (12 feet),
- c. the privacy screen shall be set back at least 0.9 metres (3 feet) from any property line other than a property line which is the extension of a common wall between two dwelling units, and
- d. no privacy screen on a corner lot shall be closer to the road than the portion of the building nearest the road.

8. EXEMPTIONS

- 8.1 Despite Section 5.1, where it is considered necessary for the health or safety of the public, the Director may permit the construction of a fence higher than the height specified in the by-law on residential property provided that the height of the fence does not exceed 2.5 metres and the height of the fence is necessary to ensure public safety. The exemption must be given in writing and duly filed in the property file.
- 8.2 The City may authorize a variance from this By-law by approval of the Director or by resolution of Council.

9. GENERAL REGULATIONS

- 9.1 No person shall erect a fence or a privacy screen or cause a fence or privacy screen to be erected unless the fence or privacy screen is,
- a. stable,
 - b. vertical,
 - c. made of materials of good quality,
 - d. suitable for the purpose, and
 - e. constructed and supported in a manner commensurate with the design of the entire fence.
- 9.2 Every person who erects a fence or a privacy screen or causes a fence or privacy screen to be erected shall keep such fence or privacy screen,
- a. in good repair,
 - b. in a safe and structurally sound condition,
 - c. free from accident hazards,
 - d. protected by paint, preservative or other weather resistant material, except for wooden fences made of cedar, redwood or treated wood and
 - e. as to not display logos, messages or graphics that promotes violence, hatred and discrimination and with gruesome pictures.
- 9.3 No person shall erect a fence or a privacy screen or cause a fence or a privacy screen to be erected,
- a. which is wholly or partly constructed of barbed wire, chicken wire or other barbed or sharp material,
 - b. which contains a device for projecting an electric current, or
 - c. in a manner that renders a swimming pool enclosure non-conforming with the requirements of the "Pool By-law" of the City.

- 9.4 No person shall erect a fence or cause a fence to be erected on City property, including any public highway.
- 9.5 No person shall erect a fence or cause a fence to be erected unless the fence is constructed and finished in such a manner so as to present the finished side thereof, as determined by the Director, toward the public street and any neighbouring property.
- 9.6 Despite paragraph (a) of Section 9.3, where required for the safety or protection of non-residential property, the portion of any fence above two hundred and fifty centimetres (250 cm) may be wholly or partially constructed of barbed wire.
- 9.7 Unsightly markings, stains or other defacements on the exterior surfaces of fences shall be removed and the surface shall be refinished when necessary.
- 9.8 No person shall erect or cause to be erected, on residential property or on lot lines of non-residential property abutting residential property, a chain link fence that is not vinyl or powder coated.
- 9.9 No person shall alter in any way the existing grades or drainage patterns of the premises, unless otherwise approved by the City Engineer. The finished grade shall comply with the approved lot grades or drainage patterns.
- 9.10 No person shall install a fence directly on a municipal infrastructure (catch basin, fire hydrant, standposts, etc.), or within any lands subject to an easement in favour of the City, without the prior written approval of the City Engineer, which approval may be withheld in the Engineer's sole discretion, and if such approval is granted, a door or an opening shall be created to provide unobstructed access to the City infrastructure. The size and location of the opening must be approved by the City.
- 9.11 In the event that a fence or portion thereof is required to be removed, or becomes damaged by the City or its authorized agents in the exercise of the City's rights pursuant to a registered easement upon which a fence has been erected (approved or otherwise), the City shall have no obligation to repair or replace such fence or compensate the owner of the fence in any manner whatsoever.

10. NON-APPLICATION OF BY-LAW

- 10.1 Section 6 does not apply to a fence erected upon, or abutting land, which is used for a railway right-of-way, or for hydro, telephone or utility installations, or for public work installations which are hazardous to the public.
- 10.2 Sections 5 and 6 do not apply to a fence required by the City as a condition of a subdivision approval or site plan approval.
- 10.3 Section 5 and Section 6 do not apply to a fence erected to enclose a tennis court and any other public recreational facility, provided that the fence is of chain link construction.
- 10.4 The provisions of this by-law do not apply to a fence erected on lands used for an agricultural operation.
- 10.5 The provisions of this by-law do not apply to a noise barrier that received approval from the City Engineer.

11. TRANSITION

- 11.1 Nothing in this by-law shall prevent the continued use and maintenance of a fence if such fence was lawfully erected in conformity with the provisions of a previous fence by-law prior to the effective date of this by-law.
- 11.2 Any exemptions approved under a previous fence by-law continue in force and shall be deemed to be issued under this by-law for regulatory and enforcement purposes.

12. GENERAL PROHIBITION

- 12.1 No person shall erect, own, or maintain, or cause or permit the erection or maintenance of any fence on private property in the City that does not comply with this by-law and any other applicable law.
- 12.2 No person shall install a fence on a common lot line of a semi-detached dwelling or a townhouse dwelling on a shared driveway.
- 12.3 No person shall erect a snow fence unless it is:
 - a. during the winter months (from November 15th to April 30th); or
 - b. to temporarily provide barricade for a public purpose.

- 12.4 No person shall erect a construction fence unless it is used to:
- a. enclose a current construction project;
 - b. surrounds a temporary event; or

13 INSPECTION

- 13.1 The City may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with:
- a. this by-law; or,
 - b. an order made under section 431 of the Municipal Act, 2001;
- 13.2 For the purposes of conducting an inspection pursuant to section 13.1 of this by-law, the City may:
- 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 from any Person concerning a matter related to the inspection; and,
 - 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.

14 OFFENCE

- 14.1 Any person who contravenes any of the provisions of this by-law is guilty of an offence.
- 14.1 Where a fence has been erected and create a safety or health hazards, the Director may remove the fence at the expense of the Owner.

15 PENALTIES

- 15.1 Every person who is convicted of an offence is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, Chap. P. 33, as amended.
- 15.2 When a person has been convicted of an offence under this by-law,
- a. the Ontario Court of Justice; or
 - b. any court of competent jurisdiction thereafter,

may in addition to any penalty imposed on the person convicted, make an order prohibiting the continuation or repetition of the offence by the person convicted.

16 ADMINISTRATION

This by-law shall be enforced by the Municipal Law Enforcement Officers of the City.

17 REPEAL

That By-law 2002-09 is hereby repealed.
That Policy AMÉ-06-02 is hereby repealed.

READ A FIRST TIME IN OPEN COUNCIL, THIS 6TH DAY OF SEPTEMBER, 2016.

original signed by
Guy Desjardins, Mayor

original signed by
Monique Ouellet, Clerk

READ A SECOND TIME IN OPEN COUNCIL, THIS 3RD DAY OF OCTOBER 2016.

original signed by
Guy Desjardins, Mayor

original signed by
Monique Ouellet, Clerk

READ A THIRD TIME AND PASSED IN OPEN COUNCIL, THIS 3RD DAY OF OCTOBER 2016.

original signed by
Guy Desjardins, Mayor

original signed by
Monique Ouellet, Clerk