

THE CORPORATION OF THE TOWN OF HANOVER

BY-LAW NUMBER 3298-24

BEING a By-law to provide for regulating and governing fences in the Town of Hanover.

WHEREAS section 8(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, (the *Act*) confers broad authority on the municipality to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

AND WHEREAS section 5(3) of the *Act*, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 11(2), paragraph 6 of the *Act*, authorizes a municipality to pass a by-law respecting the health, safety and well-being of persons;

AND WHEREAS section 11(3), paragraph 7 of the *Act*, authorizes a municipality to pass by-laws respecting fences;

AND WHEREAS section 98 of the *Act*, stipulates that a municipality may provide that the *Line Fences Act* does not apply to all or any part of the municipality, but despite such by-law being passed, section 20 of the *Line Fences Act* continues to apply throughout the municipality;

AND WHEREAS section 425 of the *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 *Act*, authorizes a municipality to establish a system of fines for the offences under a by-law;

AND WHEREAS pursuant to section 436 of the *Act*, 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 compliance of a by-law of the municipality passed under this *Act*;

AND WHEREAS section 446 of the *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 pursuant to section 438 of the *Act*, a municipality has the power to pass by-laws providing that the municipality may, in the circumstances set out in the by-laws, undertake inspections pursuant to orders under section 438 of the *Act*;

AND WHEREAS section 23(1) of the *Act*, authorizes a municipality to delegate powers and duties to a person or body;

AND WHEREAS it is deemed expedient to exclude the Town from the provisions of the *Line Fences Act, R.S.O. 1990, c.L.17*, as amended;

AND WHEREAS the Council of the Corporation of the Town of Hanover deems it necessary to regulate and govern fences in the municipality;

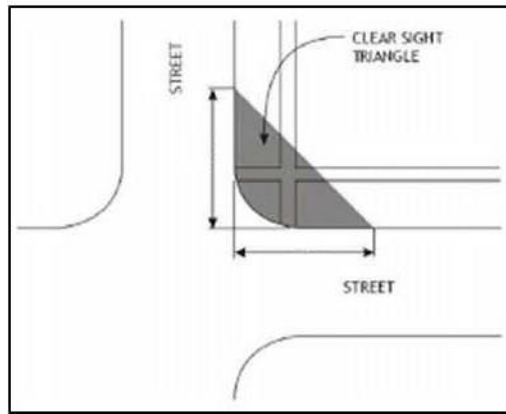
NOW THEREFORE the Council of The Corporation of the Town of Hanover enacts as follows:

1. **DEFINITIONS**

In this by-law,

- 1.1. **“Building”** means any structure, other than a lawful boundary wall or fence, having a roof, supported by columns or walls or other foundation supports used or intended to be used for the shelter, accommodation, or enclosure of persons, animals or chattels;
- 1.2. **“Corner Lot”** means a lot situated at the intersection of and abutting upon two streets, or upon two parts of the same street, the adjacent sides of which street or streets, (or, in the case of a curved corner, the tangents at the street extremities of the side lot lines) contain an angle of not more than 135 degrees. In the case of a curved corner, the corner of the building lot shall be that point on the lot line abutting a street nearest to the point of intersection of the said tangents;
- 1.3. **“Council”** means the Council of the Town of Hanover;
- 1.4. **“Driveway Visibility Triangle”** means a triangular area formed by the intersection of the lateral limit of the travelled portion of a driveway and the street line or sidewalk (if existing) or the projections thereof, and a straight line connecting them 2.7 metres from their point of intersection;
- 1.5. **“Effective Ground Level”** means the highest level of the ground within 1.0 m horizontally in any direction from the point being considered;
- 1.6. **“Fence”** includes 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, to establish a property boundary, or to provide privacy; and includes any hedge or grouping of shrubs used for the same purpose located in corner visibility triangle or driveway visibility triangle;
- 1.7. **“Height”** means the distance measured from the effective ground level where the fence posts are embedded to the top of the said fence or posts; 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 or posts;
- 1.8. **“Lot Line”** means any boundary of a lot or a vertical projection thereof;
- 1.9. **“Officer”** means a Municipal Law Enforcement Officer whose duties include the enforcement of this by-law;
- 1.10. **“Privacy Screen”** means a visual barrier used to shield any part of a yard from view from any adjacent parcel or highway;
- 1.11. **“Residential Zone”** means any land zoned Residential under the Town’s zoning by-law;
- 1.12. **“Sight or Daylight Triangle”** - Means an area free of buildings or structures and which area is to be determined by measuring from the point of intersection of street lines on a corner lot, the distance required by this By-law along each such street line and joining such points with a straight line and the triangular-shaped land between the intersecting street lines and the straight line joining the points the

required distance along the street lines is the daylight triangle pursuant to section 6.26 of the Zoning Bylaw;



- 1.13. **“Zoning By-law”** means any by-law administered by the Town passed pursuant to section 34 of the *Planning Act, R.S.O. 1990, c.P.13*, or a predecessor or successor thereof, as may be amended from time to time.

2. FENCES – CONTRARY TO REGULATIONS

2.1. PROHIBITED

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.

2.2. PROHIBITED – HEIGHT

Subject to section 7.1 of this By-law, no person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence exceeding a height of 2.0 metres.

2.3. RESTRICTION – MATERIALS OF CONSTRUCTION – RESIDENTIAL ZONE

No person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence comprised of pallets, skids, or discarded materials not intended for the purpose of fence construction materials on a lot used for residential purposes.

2.4. CONTRAVENTION OF ORDER

No person shall contravene a Work Order or an Order to Discontinue Activity.

3. EXISTING FENCES

3.1. Fences - Deemed to Comply

- (a) Notwithstanding the provisions of this by-law, any fence that is in existence prior to the date of the enactment of this by-law and in compliance with other applicable regulations including Town of Hanover by-laws, shall be deemed to comply with this by-law and may be maintained with the same material, height and dimensions as previously existed including any repair work that may be done to such fence.
- (b) Subsection 3.1(a) shall not apply to the requirements set out in subsections 4.1(c), and 7.1(b), and for greater certainty, the deemed to comply provision shall not apply to a fence within a corner visibility triangle or driveway visibility triangle.

4. RESIDENTIAL FENCES

4.1. HEIGHT - LOCATION

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained a fence on a lot used for residential purposes except in accordance with all of the following regulations:

- (a) a fence within any yard shall not exceed a height of 2.0 metres;
- (b) no fence shall be located or constructed so as to block access to a parking space as required by the Zoning By-law unless such fence is constructed with a gate at least 2.59 metres wide giving access to such parking space;
- (c) no fence exceeding 0.9 metres in height may be erected within any corner visibility triangle or driveway visibility triangle, and;
- (d) the provisions of subsection (a) do not apply to a fence erected to enclose a privately-owned outdoor tennis court on residential property, provided the fence is of chain link construction and located no closer to a property line than 2.0 metres;
- (e) all work is to be completed within the boundary of the property.

4.2. HEIGHT – EXCEPTION

A minor exemption for increased fence height (beyond 2.0 metres) may be considered by the Director of Building and Planning or designate, in cases where:

- (a) a residential lot line abuts natural/open spaces, public walkways or trails or other adjacent uses which may require increased security measures;
- (b) residential lands abut highways, commercial, and/or industrial zones and where concerns about noise are being attenuated by some form of soundproofing and/or noise attenuation;
- (c) or any other circumstances that may warrant consideration for minor exemption at the discretion of the Director of Building and Planning or designate.

5. PRIVACY SCREENS

5.1. HEIGHT – LOCATION

A privacy screen may be erected in a side yard or rear yard, if:

- (a) it is more than 4.5 metres from the street line; and
- (b) it is more than 1.2 metres from any side lot line, provided, however, that where the privacy screen is located so as to provide a visual barrier between dwelling units divided by a common wall, such screen may be placed closer along the common property boundary, and;
- (c) it is more than 1.2 metres from the rear lot line; and
- (d) the privacy screen is not more than 12 metres in total length, and no single individual length is longer than 5 metres; and
- (e) the privacy screen is not more than 3 metres above effective ground level.

6. SWIMMING POOLS

6.1. Notwithstanding the other provisions of this by-law, no person shall construct or maintain a private outdoor swimming pool unless the pool, or the land on which the pool is located is effectively fenced or enclosed in accordance with the following provisions;

- (a) every fence shall be not less than 1.5 m in height;
- (b) every fence shall be so constructed that all horizontal or diagonal structural members shall be located on the inside or pool side of, the fence;
- (c) every outside face of a fence shall be so constructed that it cannot be used in a manner similar to a ladder. For the purpose of this section, a shadow-type fence is deemed to comply, provided the horizontal members are 1.1 m apart;
- (d) every fence shall be constructed so that the only means of entry is by gates or doors of 1.5 m in height, each gate shall be equipped with a lock and kept secured when the pool is not in use;
- (e) a dwelling, building or accessory building may be utilized to effectively enclose any pool;
- (f) the vertical walls of an above-ground pool can be used as part of a pool enclosure provided that the vertical walls are at least 1.52 m in height and do not possess any horizontal members that may facilitate climbing;
- (g) the ladder area, which provides access to an above-ground pool, must be enclosed within a fence or equipped with a lockable cover and kept secured when the pool is not in use;
- (h) a hedge shall not be used as or considered to be a fence for the purpose of this Section.

6.2. TEMPORARY FENCE DURING CONSTRUCTION

The owner shall ensure that temporary fencing meeting the requirements of this section is in place during all phases of construction of the pool such that unauthorized access to the site is prevented. Temporary fencing shall be of 1.22 m high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Chief Building Official and shall be securely attached at any opening when the area is left unattended.

7. INDUSTRIAL AND COMMERCIAL LOTS

7.1. ENCLOSURE – SPECIFICATIONS

A person may have, erect, construct, maintain or permit to be erected, constructed or maintained a fence to enclose a front yard of a lot used primarily for industrial or commercial purposes provided that such fence shall:

- (a) be set back from the front lot line a minimum of 7.62 metres; and,
- (b) if on a corner lot, not be within any corner visibility triangle or driveway visibility triangle;

- (c) permit a maximum height of 3 metres where the lands are zoned industrial, or commercial, are used for industrial or commercial purposes, and where they do not abut lands zoned residential, nor are they used in combination with residential uses.

8. BARBED WIRE FENCES

8.1. PROHIBITED – EXCEPTIONS

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any barbed wire fence, except that barbed wire is permitted;

- (a) on the top of a fence erected on a lot used for industrial uses provided that it projects inwards to the area enclosed by the fence; and,
- (b) on the top of a fence erected for security reasons around any facility owned, operated or maintained by any level of government or a utility provider.

9. ELECTRIC FENCES

9.1. PROHIBITED

No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any fence equipped with a device for transmitting an electric current thereon or there through, except on agricultural land used for the purpose of keeping livestock provided that the maximum electrical current does not exceed 120 volts at .04 amps and complies with all other applicable legislation.

10. CONDITIONS

10.1. DEVELOPMENT – REDEVELOPMENT

Notwithstanding any other provision herein, a fence which is constructed as required in a registered agreement or agreements entered into with The Corporation of the Town of Hanover pursuant to sections 41 and 51 of the *Planning Act*, as amended, or any plans approved by the Town in accordance with those sections shall be deemed not to contravene the provisions of this by-law.

11. LINE FENCES ACT – DIVISION FENCES

11.1. LINE FENCES ACT – NOT APPLICABLE

The *Line Fences Act* shall not apply to any part of the Town of Hanover.

11.2. DIVISION FENCE-COST-SHARED ADJOINING LAND OWNERS

Each of the owners of adjoining occupied land are to repair, replace or maintain a just proportion of any division fence heretofore or hereafter erected which marks the boundary of their respective properties, or are to bear a just proportion of the cost of any work or erection, repair, replacement or maintenance which has been carried out.

11.3. DIVISION FENCE – TYPE – DISAGREEMENT – PROCEDURE

Where owners of adjoining land cannot agree on the type or kind of fence to be erected between them as provided by section 11.2 of this by-law, no contribution to the cost thereof is to be payable unless the party erecting the fence constructs a chain link fence 1.22

metres in height. Only upon such fence being constructed will the provisions of section 11.2 of this by-law apply respecting the apportionment of costs of the said fence.

12. ORDERS

12.1. WORK ORDER – CONTRAVENTION OF BY-LAW

If an Officer is satisfied that a contravention of the by-law has occurred, the Officer may make an order, known as a Work Order, requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do the work to correct the contravention.

12.2. WORK ORDER – CONTENTS

The Work Order shall set out:

- (a) the municipal address or the legal description of the land;
- (b) reasonable particulars of the contravention and of the work to be done;
- (c) a deadline, being a specific date, for compliance with the Work Order; and
- (d) a notice that if the work is not done in compliance with the Work Order by the deadline, the municipality may have the work done at the expense of the owner and the cost of the work may be recovered by adding the amount to the owner's tax roll.

12.3. WORK ORDER – SERVICE

The Work Order may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

12.4. WORK ORDER – UNABLE TO EFFECT SERVICE

If the Town is unable to effect service on the owner under section 12.3, it shall place a placard containing the terms of the Work Order in a conspicuous place on the land and may enter on the land for this purpose. The placing of the placard shall be deemed to be sufficient service of the Work Order.

13. REMEDIAL ACTION

13.1. REMEDIAL ACTION

Every person who has, erects, constructs, maintains, or permits to be erected, constructed or maintained any fence that does not comply with the provisions of this by-law shall forthwith take any necessary action to ensure that the fence complies with the provisions of this by-law.

13.2. REMEDIAL ACTION – WORK DONE BY TOWN

In default of the work required by this by-law or by a Work Order not being done by the person directed or required to do it, the Town in addition to all other remedies it may have, may do the work or cause the work to be done at the person's expense and may enter upon land, at any reasonable time, for this purpose.

Where any person fails to comply with an Order issued, the municipality may cause the required work to be done at the cost of the person. The cost of such work may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

14. ADMINISTRATION AND ENFORCEMENT

- 14.1. If a person is found to have contravened any of the provisions of this by-law, the Town may issue a notice or fine, to the person to remedy the contravention setting out the reasonable particulars of the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the notice.
- 14.2. Every person to whom a notice is issued under this by-law shall comply with the notice within the time set in the notice. Failure to comply with notice may also result in a fine.
- 14.3. Where any act or thing required to be done in accordance with this by-law is not done, the Town may cause the matter or thing to be done and shall recover the costs of so doing by adding the costs to the tax roll of the property and collecting them in the same manner and with the same priority as municipal taxes.
- 14.4. Where any act or thing required to be done in accordance with this by-law is not done, the Town may cause the matter or thing to be done and shall recover the costs of so doing by adding the costs to the tax roll of the property of the person named in the said notice and collecting such costs in the same manner and with the same priority as municipal taxes.
- 14.5. Every person who contravenes any provision of this bylaw is guilty of an offence as provided for in subsection 429(2) of the *Municipal Act, 2001*, and all such offences are designated as continuing offences as provided for in subsection 429(2)(a), and further if the event continues subsection 429(3)1 of the Act.
- 14.6. When a person has been convicted of an offence under this bylaw, the Superior Court of Justice, or any court of competent jurisdiction, thereafter may, in addition to any penalty imposed on the person convicted, issue an order:
 - (a) prohibiting the continuation or repetition of the offence by the person convicted; and,
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 14.7. Every person who contravenes any provision of this bylaw is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act, R.S.O. 1990, Chapter P.33*, as amended.

- 14.8. Any person who contravenes a provision of this by-law is guilty of an offence as set out in "Schedule A"

15. LIABILITY

Pursuant to Section 448 of the *Municipal Act S.O 2001, c.25*, as amended, no proceeding for damages or otherwise, shall be commenced against a member of Council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law for any alleged neglect or default in the performance in good faith of the duty or authority.

16. RIGHT OF ENTRY

16.1. OFFICER – ENTER ON LAND

Pursuant to Section 435 and 436 of the *Municipal Act S.O, 2001, c.25*, as amended, an Officer and anyone under the Officer's direction, may enter upon property, at any reasonable time, for the purpose of carrying out inspections of or on such property to determine whether or not the provisions of this by-law are being complied with;

- 16.2. In accordance with the provisions of the *Municipal Act S.O 2001, c.25*, as amended, Section 426(1), no person shall hinder, interfere with, or otherwise obstruct, either directly or indirectly, an Officer in the lawful exercise or power or duty under this by-law;

- 16.3. Where an authorized officer has reasonable grounds to believe that an offence has been committed by a person, the authorized officer may require the name, address and proof of identity of that person, and the person shall supply the required information.

17. PRESUMPTION

- 17.1. An Owner of a property on which a non-compliance or contravention has occurred shall be presumed to have carried out or caused or permitted to be carried out the non-compliance or contravention, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

18. SEVERABILITY

18.1. PROVISION – SEVERABLE

It is hereby declared that each and every of the foregoing provisions of this by-law is severable and that, if any provision of this by-law should for any reason be declared invalid by any Court, it is the intention and desire of this council that each and every of the then remaining provisions hereof shall remain in full force and effect.

19. REPEAL – ENACTMENT

19.1. BY-LAW PREVIOUS

By-law 1762-3-5-90 and any amendments thereto are hereby repealed.

19.2. SHORT TITLE

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

19.3. EFFECTIVE DATE

This by-law shall come into force and effect on the day that it is passed.

READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED this 18th day of March, 2024.

Susan Paterson, Mayor

Vicki McDonald, Clerk

SCHEDULE ‘A’ TO BY-LAW NO. 3298-24

PART 1, PROVINCIAL OFFENCES ACT

BEING a by-law to provide for regulating and governing fences within the boundaries of The Corporation of the Town of Hanover.

NOTE: the general penalty provisions for the offences listed above is Section 16.1 of by-law 3298-24, a certified copy of which has been filed