

Corporation of the Township of Atikokan
By-law 23-07

Being a by-law of the Corporation of the Township of Atikokan to provide for prohibiting and regulating of fences within the municipality and to repeal By-law 35-90.

Whereas the Municipal Act, 2001, S.O. 2001, c.25, S.130 provides that a municipality may regulate matters not specifically provided for by this Act or any other Act for purposes related to health, safety and well-being of the inhabitants of the municipality.

AND WHEREAS the Municipal Act, 2001, S.O. 2001, c.25, s.11 provides that municipality may pass by-laws respecting structures, including fences.

AND WHEREAS the Council of the Corporation of the Township of Atikokan deems it necessary to prohibit and regulate fences within the Municipality.

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ATKOKAN ENACTS AS FOLLOWS:

1. THAT no person shall construct, erect, maintain or keep within the Township of Atikokan any fence in contravention of the provisions of this By-law, unless such fence was erected in compliance with the predecessor And is in compliance with the predecessor of this by-law and is not moved, altered or enlarged in any way.

DEFINITIONS

2. That in this By-law:
 - 2.1. Building Line **shall mean** the regulatory or established building line as defined by the applicable zoning by-law affecting the property. **(set back)**
 - 2.2. Building Envelope means that area of a lot within which a principle building could be constructed in compliance with the site development specifications as outlined in the applicable zoning by-law.
 - 2.3. Farm Fence shall mean a fence erected for the purpose of containing livestock, enclosing crops, water areas, woodlots, buildings, fields or laneways for the operation of agriculture.
 - 2.4. Fence shall mean a structure of vertical, horizontal or diagonal **member** of any combination thereof, erected as a barrier, enclosure or demarcation outside the building envelope. A hedge shall not be used as a fence for the purposes of this by-law. See Sect 12(2).
 - 2.5. Fence Height shall mean the measurement from the base of the fence at grade of the highest adjacent ground to the finished top of the fence.
 - 2.6. Front Lot Line shall mean the lot line that divides the lot from the street.
 - 2.7. Privately Owned Outdoor Swimming Pool shall mean a swimming pool capable of having a water depth of 76.2 cm. or more at any point and is located on private property under the control of the owner or occupant, which has been designed for swimming or bathing, but shall not include an existing natural body of water or watercourse or artificial ornamental ponds, located on private

property which may contain non-native fish. For Hot tubs see Section 7.3 f (iii).

- 2.8. Shadow Fence shall mean a fence consisting of alternating vertical boards on both sides of a top and bottom rail.
- 2.9. Daylighting Triangle (sight triangle) means the triangle space on a lot formed by 2 intersecting street lines and line drawn from a point in one street line across such lot to a point in the other street line, each such point being a distance of 9 metres from the point of intersection of the street lines. (measured along the street lines)

2.10. Snow Fencing shall mean a fence commonly used for the control of snow.

2.11. “Zone” means land use designations as utilized in the current Township of Atkokan Zoning By-law.

3. If located back of the building line, a fence may be erected up to a maximum height of 2.1 m. except in an industrial zone as defined in the applicable zoning by-law when the maximum height shall be 2.4 m. If located between the building line and the front lot line, the maximum height of **0.90 m** in any zone, except that a fence erected with a maximum height of 2.4m will be permitted when used to enclose or protect a property for institutional, commercial or industrial zones as defined in the applicable zoning by-law.

4. Notwithstanding the provisions of section 3 above. On a corner lot, a fence not exceeding 2.1 m. in height may be erected to the front lot line provided that no fence shall be erected or maintained higher than **76.2cm**. as measured from the centerline of the road within the day lighting triangle, (sight triangle) as determined in accordance with Schedule “A”.

5. Barbed wire fences are prohibited in the Township of Atkokan.

6. Snow fencing may not be used as a permanent fence in any zone where the word residential appears in the applicable zoning by-law within the areas of the Town.

7. Fencing of Privately Owned Swimming Pools

No person shall construct or maintain a privately owned outdoor swimming pool unless the pool or the land on which such pool is located is fenced or enclosed in accordance with the following provisions:

7.1 every such fence shall not be less than 1.5 m. in height;

7.2 every fence shall be constructed so that all diagonal members shall be to the pool side of the fence and every fence having horizontal members shall be constructed so that all horizontal members are to the pool side of the fence unless the horizontal members are a minimum of 1.1 metres apart;

7.3 every such fence shall be composed of:

- (a) chain link construction, as determined in accordance with Schedule “B”.
- (b) vertical members where the spacing between such vertical members is greater than 25 mm but not greater than 50 mm and the horizontal rails are a minimum of 1.1 metres apart, as determined in accordance with Schedule “B”; or

(c) vertical members where the spacing between such vertical members is no greater than 25 mm, as determined in accordance with Schedule “B”;

(d) shadow fencing where the spacing between the vertical members does not exceed the width of the member being used and the horizontal rails are a minimum of 1.1 metres apart, as determined in accordance with Schedule “B”;

(e) the use of wood lattice is permitted for the top portion of any of the fence types mentioned provided:

(i) where the fence is a maximum height of 1.5 m, wood lattice for the top portion shall not exceed 300 mm, as determined in accordance with Schedule “C”.

(ii) where the fence is a maximum height of 1.8 m, wood lattice for the top portion shall not exceed 600 mm, as determined in accordance with Schedule “C”.

(f) (i) Above Ground Pools

A vertical iron bar or wood fence shall be permitted for protection on the upper portion of an above ground pool provided the sides of the pool are a minimum of 1.1 m above grade and the spacing in fence does not exceed 100 mm, between vertical members, as determined in accordance with Schedule “E”.

(ii) In ground Pools

A vertical iron bar fence shall be permitted for protection of in ground pools provided the spacing of the bars does not exceed 100 mm, between vertical members, as determined in accordance with Schedule “E”;

(iii) Hot Tubs

Hot tubs shall be fitted with a tight fitted cover, with a locking device or be protected with a 1.5 m. minimum high fence.

7.4. where the fence required for a privately-owned outdoor swimming pool will abut an existing embankment, retaining wall, fence or structure, or thing such that the protection provided by the separation is negated, the minimum separation of 1.5 metres is required as shown in Schedule “F”.

“Gates” 7.5. every such fence shall be constructed so that the only means of entry is by gates or doors of not less than 1.5 m in height and such gate or door shall be capable of being locked.

(a) where the latching device of the gate is otherwise accessible from the outside of the fence, the latching device must be at least 1.5 m above the ground on the outside of the fence.

(b) every gate must be fitted with a device that will automatically return the gate or door to the closed position and operate the latching device to secure the gate.

- 7.6. a dwelling, building or accessory building or part thereof, may be used to enclose a pool or act as part of the fence.
- 7.7. in the case of an above ground privately owned swimming pool where the wall of the pool satisfy all of the requirements otherwise required for fences which enclose swimming pools, no other fence is required.
- 7.8. where two pools have been installed on adjacent lots, the fence separating such pools shall be a minimum of 1.5 m in height and where such pools are installed, section 7 (2) shall not apply;
- 7.9. the provisions of this by-law shall not apply to any pool which is subject to the regulations under the Building Code Act, 1992, S.O. 1992, Chapter 23, Section 3.11.
8. No person shall excavate for, erect or construct a privately-owned outdoor swimming pool without first submitting the following plans and obtaining a permit:
 - 8.1. a plot plan showing the location for such pool and all other structures on the lot and within 1.5 m of any adjacent lot;
 - 8.2. the types of materials to be used for fencing and gates as well as the height and construction design.
9. Notwithstanding the height restrictions of this by-law, nothing shall prevent the operator of a salvage yard from erecting a fence with a minimum height of 2.4 m. and a maximum height not to exceed 3.0m. where such property abuts a residential zone.
10. Subject to Section 11 herein but notwithstanding the other provisions of this by-law, nothing shall prevent the construction and maintenance of farm fences in agricultural, rural residential or open space zones as defined by the applicable zoning by-law.
11. The use of any device for projecting an electric current through or in conjunction with a fence is prohibited except on farm fences in any agricultural zone as defined by the applicable zoning by-law.

Fences Material and Maintenance
12. 12.1. except as provided in section 7 of this By-law, a fence shall be constructed of suitable material, dressed lumber, ornamental wire, ornamental iron, piping, stone, brick or concrete, or other material designed and intended for such use or any combination thereof;
 - 12.2. in lieu of the above materials, a live hedge may be grown provided that no person shall permit any such live hedge to overhang public property nor to exceed the height limitations of section 3.
 - 12.3. all fences shall be designed, constructed and maintained with an acceptable finish to the satisfaction of the Building Inspector.
13. The Council may, by resolution, order any existing fence or hedge, which does not conform to the foregoing provisions of this by-law, to be removed

or replaced by a new fence or hedge at the expense of the proprietor within a delay of fifteen days from a notice in writing to the effect from the Building Inspector.

14. 14.1. The construction of a new fence along any street, avenue, road, or public place must have the finished side facing such street. Whenever any fence or hedge alongside of any street, avenue, or public place is in need of repair to make it conform to the foregoing provisions, the Building Inspector may give notice in writing to the proprietor of such fence or hedge to repair the same and make it conform to the provisions of the present by-law or to remove it altogether within a delay of fifteen days.

14.2. (a) When any fence or wall or part of a fence or wall or any gate shall be or become so damaged or in such need of repair by reason of fire or decay or otherwise as to be a likely cause or source of immediate danger to passers-by or to the public, such fence or wall or part thereof or such gate shall be deemed to be a nuisance and the Building Inspector, at the order of the Council, may give notice in writing to the proprietor of the immovable property on which such fence or wall or gate stands, or to the agent of such property to remove or demolish it or to repair it in conformity with the provisions of this By-law within a period of two days.

(b) if such fence or wall or gate shall not be removed or demolished or repaired in conformity with the provisions of this By-law within two days after the service of the notice ordered as aforesaid, the Building Inspector may cause such fence or wall or part thereof or such gate to be demolished or removed and the cost of such work may be recovered from the owner of such immovable property.

(c) No fence, wall or gate, shall be repaired except in conformity with the provisions of this By-law.

15. Whenever any proprietor of a piece of land or a lot has been required and notified to construct, remove, replace or repair any fence or hedge as hereinbefore provided and neglects so to do, without prejudice to the right to recover the penalties hereinafter provided, the Council may authorize the construction, removal, replacement or repair or such fence or hedge under the supervision of the Building Inspector and the amount expended thereon shall be a special charge upon the lot or land of which such fence or hedge is a necessity and shall have the same privileges attached to and be recoverable from the proprietor as a special tax thereon.

Exemptions

16. The provisions of this by-law shall not apply to the erection of fences for public safety by the Corporation of the Township of Atikokan or any local boards thereof, any public utilities commission, including Bell Telephone, Union Gas and Ontario Hydro, and all boards of education.

Validity

17. Where the provision of this by-law conflicts with the provision of another by-law in force within the municipality, the provision that establishes the higher standard to protect the safety of the general public shall prevail.

Severability

18. Should any section, subsection, clause or provision of this By-law be declared by a Court of competent jurisdiction to be invalid the same 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.

Offence

19. Any person who contravenes any provisions of this by-law is guilty of an offence and is liable to a fine as provided in the Provincial Offences Act.

READ a first time this day of , 2007.

Mayor

Clerk

READ a second time this day of , 2007.

Mayor

Clerk

READ a third time this day of , 2007.

Mayor

Clerk