

BY-LAW 92-2012

A by-law of the Township of Russell regulating fences

OFFICE CONSOLIDATION

THIS OFFICE CONSOLIDATION IS UP TO DATE AS OF DECEMBER 16, 2019.

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Office Consolidation of By-law 92-2012 as amended by the following approved by-laws: 118-2014, 122-2014, 2018-114, 2018-129, 2019-184

The Corporation of the Township of Russell

By-Law # 92-2012

BEING a by-law to provide for regulating and governing fences in the Township of Russell;

WHEREAS Section 11 (3) (7) of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended authorizes Council to pass by-laws concerning structures including fences;

AND WHEREAS the Council of the Corporation of the Township of Russell deems it necessary to regulate and prescribe fences within the Township of Russell;

AND WHEREAS Section 11 (2) (6) of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended authorizes Council to pass by-laws concerning health, safety and well-being of Persons;

AND WHEREAS Section 425 of the Municipal Act, 2001 authorizes Council to pass by-laws providing that a Person who contravenes a by-law of the Corporation of the Township of Russell passed under that Act is guilty of an offence; and

NOW THEREFORE THE CORPORATION OF THE TOWNSHIP OF RUSSELL BY ITS MUNICIPAL COUNCIL HEREBY ENACTS AS FOLLOWS:

Part 1

DEFINITIONS

1.1 In this by-law,

“Agricultural Property” means a property that is zoned for an agricultural use in the applicable Zoning By-law;

“Council” shall mean the elected member of the Council of the Corporation of the Township of Russell;

“Corporation” shall mean the Corporation of the Township of Russell;

“Director” shall mean the Director of Public Safety and Enforcement as appointed by the Township of Russell from time to time, and his/her designate;

“Fence” means a structure or partition made of wood, metal or other substance that is constructed for any purpose, such as marking the boundary of a property,

enclosing a property, providing privacy, preventing escape or access by people or animals, or dividing a property into sections, and includes every door, gate and other closure that forms part of the Fence, and does not include a hedge;

“Front Yard” means the space extending across the full width of a lot between the front line and nearest part of any main building on the lot, not including a permitted projection;

“Gate” means a swinging or sliding barrier used to fill or close an access and includes a door;

“Height” means the distance measured perpendicularly from the native ground level, on which a lawful fence is constructed or maintained, to the top of such fence. Where the ground levels are not the same on both sides of the fence the higher of such levels shall be considered the ground level for the purposes of the height.

“Lot Line” shall mean any boundary of a lot or the vertical projection thereof.

- a) **Front Lot Line** shall mean, in the case of an interior lot, the lot line that divides a lot from the street. In the case of a corner lot or through lot, the shorter lot line abutting a street shall be deemed to be the front lot line. In the case of a corner lot or through lot where the lot lines abutting the street are the same length, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.
- b) **Rear Lot Line** shall mean, in the case of a lot having four or more lot lines, the lot line furthest from and opposite to the front lot line. If the lot has less than four lot lines, there shall be deemed to be no rear lot line.
- c) **Side Lot Line** shall mean any lot line other than the front or rear lot line.
- d) **Exterior Side Lot Line** shall mean that lot line that abuts a street.

“Municipal Law Enforcement Officer” shall mean a Municipal Law Enforcement officer appointed by the Corporation of the Township of Russell to enforce municipal by-laws;

“Non-residential Property” means a property that is zoned for a use other than residential in the Zoning By-law;

“Owner” shall mean the registered owner of a property, a lessee, tenant, mortgagee in possession or Person otherwise in charge of any property, acting as the authorized agent of the owner;

“Person” shall mean an individual, firm, corporation, association, partnership or an individual in his or her capacity as a trustee, executor, administrator or other legal representative;

“Rear Yard” means a space extending across the full width of a lot between the rear lot line and the nearest part of any main building, not including a permitted projection. In the case of a lot with less than three lot lines, the rear yard means

the space extending across the full width of a lot between the intersection between the side lot lines and the nearest part of any main building, not including a permitted projection;

“Residential Property” means a property that is zoned for residential use in the Township of Russell Zoning By-law that applies to the property;

“Sight triangle” has the same meaning as in the Township of Russell Zoning By-law;

“Township” shall mean the Corporation of the Township of Russell;

“Zoning By-law” means a by-law under section 34 of the *Planning Act* or a predecessor or successor thereof, as may be amended from time to time.

Part 2

General Regulations

- 2.1** No Person shall erect, construct, maintain, or cause or permit to be erected, constructed or maintained any Fence that does not comply with the provisions of this by-law and any other applicable by-law.
- 2.2** No Person shall erect a Fence or cause a Fence to be erected unless the Fence is,
- a) Stable;
 - b) Vertical;
 - c) Made of material of good quality;
 - d) Suitable for the purpose; and
 - e) Constructed and supported in a manner commensurate with the design of the entire Fence.
- 2.3** Every Person who erects a Fence or causes a Fence to be erected shall keep such Fence
- a) in good repair;
 - b) in a safe and structurally sound condition ;
 - c) free from accident hazards, and;
 - d) protected by paint, preservative or other weather resistant material, except for wooden Fences made of cedar, redwood or treated wood.
- 2.4** No Person shall have, erect, construct, maintain or permit to be erected a Fence which is wholly or partly constructed of sheet metal or corrugated metal panel members.

- 2.5 No Person shall erect a Fence or cause a Fence to be erected on Township property, including within road allowances.
- 2.6 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, towards the public street and/or the neighbouring properties.
- 2.7 Unsightly markings, stains or other defacements on the exterior surfaces of Fences shall be removed and the surface shall be refinished when necessary to the satisfaction of the Director.
- 2.8 No person shall have, erect, construct, maintain or permit to be erected a Fence in a manner that renders a swimming pool enclosure non-conforming with the requirements of by-law No. 35-2012 of the Township of Russell being the swimming pool by-law.
- 2.9 All persons erecting or causing or permitting a fence to be erected are responsible to ensure that they have a legal right to erect the fence on the proposed location. The Township of Russell will not be involved in property ownership disputes regarding property line location, private right-of-ways and/or easements.

Part 3

Existing Fences

- 3.1 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 Township 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. Any repair which is fifty percent (50%) or more of any fence is to be repaired or replaced, after the passing of this by-law, such replacement and or repairs shall meet the requirements of this by-law.
- 3.2 The deemed compliance provision set out in subsection 3.1 shall not apply to a Fence which is located within a Sight Triangle, within one (1) metre of a fire hydrant, or is otherwise deemed to be a safety hazard in the sole discretion of the Director. All such Fences shall be required to comply with the provisions of this By-law, notwithstanding that the Fence was in existence prior to the date of the enactment of this By-law.

Part 4

Residential Property

4.1 Height – location

No Person shall, erect, construct, maintain or permit to be erected, constructed or maintained a Fence on a property used for residential purposes except in accordance with the following:

- a) A Fence within any yard that is not a front yard, shall not exceed a height of 2.1 metres (7 feet); except for decorative archways or gates that may exceed the maximum height restriction by fifty (50) centimetres;
- b) Notwithstanding subsection a) in a through lot a fence within 6 metres of the rear lot line shall not exceed 0.9 metres (2.46 feet).
- c) Notwithstanding subsections a) and b) where a lot used for residential purposes abuts a commercial or industrial property the maximum height may be of the prescribed height of the abutting property;
- d) A Fence within a front yard shall not exceed 0.9 metres (2.46 feet) in height;
 - i. Notwithstanding any provisions of this By-law to the contrary, that a wrought (rod) iron fence and wrought (rod) iron gate be permitted in the front yard at 161 Felton Crescent in Russell being Concession 2, Part of Lot 2. Height of fence: 4.6ft or 1.4m. Height of gate: 6.6ft or 2.01m. *(amended by By-law 92-2014 on September 15, 2014)*
 - ii. Notwithstanding any provisions of this Bylaw to the contrary that an ornamental iron fence and an ornamental iron gate be permitted in the front yard at 1053 Concession Street in Russell being Lot 13 to 25 on RP 50R2718 Part 1. Height of fence: 5ft or 1.5m. *(amended by By-law 122-2014 on September 29, 2014)*
 - iii. Notwithstanding any provisions of this By-law to the contrary that a PVC fence be permitted in the front yard at 735 St-Thomas Road in Embrun and the height of the fence ranges between 55.5” and 69.5”. *(amended by By-law 2018-114 on September 4, 2018)*
- e) 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 a Fence is constructed with a gate at least 2.59 metres (8.5 feet) wide giving access to such parking space;
- f) No Fence exceeding 0.75 metres (3 feet) in height may be erected within any Sight Triangle;
- g) 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 than 2.0 metres to a Property Line.
- h) No part of a Fence shall be constructed in a manner that would project over the Fence owner’s Property Line.
- i) No Person shall erect or cause to be erected a Fence on land owned by the Township of Russell, including road allowances;
- j) No Person shall construct or erect a Fence within one metre (3 ft) of a fire hydrant; and

- k) Despite subsection h) the local fire department of the Township may give permission for a Fence to be installed closer to a fire hydrant.

Part 5

Non-Residential Property

5.1 Height – location

No Person shall, erect, construct, maintain or permit to be erected, constructed or maintained a Fence on a Non-Residential Property except in accordance with the following:

- a) a Fence within any yard that is not a front yard, shall not exceed a height of 2.4 metres (8 feet);
- b) a Fence within a front yard shall not exceed a height of 0.9 metre (2.46 feet);
- c) despite subsections a) and b), a Fence to enclose a lot used primarily for a sports or recreational facility, industrial purposes, public utility, an installation for the generation and distribution of electricity, a pipeline valve, a storage site for chemicals and explosives, a sludge pit or a property used for a similar or related purposes shall not exceed 2.7 meters (9 feet) and the said Fence shall comply with the yard and setback requirements of the Zoning By-law that applies to the property.
- d) no Fence exceeding 0.75 metres (3 feet) in height may be erected within any Sight Triangle;
- e) Despite subsection a), the height requirements shall not apply to a Fence on an Agricultural Property that is necessary for the raising of certain types of animals or for another agricultural purpose;
- f) The Director may allow for a Fence to exceed the maximum limits of section 5.1 to ensure public health or safety;
- g) No part of a Fence shall be constructed in a manner that would project over the Fence owner's Property Line;
- h) No Person shall erect or cause to be erected a Fence on land owned by the Township, including road allowances;
- i) No Person shall construct or erect a Fence within one metre (3 ft) of a fire hydrant; and
- j) Despite subsection i) the local fire department of the Township may give permission for a Fence to be installed closer to a fire hydrant.

Part 6

Prohibited materials and exceptions

6.1 Barbed wire

No Person shall, erect, construct, maintain or permit to be erected, constructed or maintained any barbed wire Fence, except:

- a) On a Fence erected on an Agricultural Property used for the purposes of keeping of livestock;
- b) On the top of a Fence erected on a lot used for business park or industrial uses, provided that it projects inwards to the area enclosed by the Fence; and,
- c) On the top of a Fence erected for security reasons around any facility owned, operated or maintained by any level of government or by a utility provider.

6.2 Electric Fences

No Person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any Fence, wholly or partly equipped, with a device for transmitting an electric current thereon or there through, except on an Agricultural Property used for the purpose of keeping livestock provided that the maximum electrical current complies with all applicable laws and legislation, and in accordance with the following provisions:

- a) perimeter Fence or wall

Despite section 6.2, an electric Fence on an Agricultural Property abutting a Residential Property shall be prohibited unless such Fence is completely surrounded by a non-electrified perimeter Fence or wall that is not less than 1.5 metres (five feet) in height..

- b) setback

- i) any opening in the perimeter Fence less than or equal to three (3) inches shall require a minimum 12 inch setback from the electric Fence; and
- ii) any opening in the perimeter Fence greater than three (3) inches shall require a minimum 36 – inch setback from the electric Fence.

- c) warning signs

Electric Fences shall be clearly identified with a 12-inch by 18-inch warning sign on both the inside and outside of each run of the Fence. The signs shall read “Warning-Electric Fence” in English and French or with international symbols, at intervals no greater than 15 metres (50 feet).

6.3 Page Wire Fence

No person shall erect, construct, maintain or permit to be erected, constructed or maintained any page wire fence except

- a) to use as a fence on an Agricultural Property for the purposes of the keeping of livestock;
- b) on a property, as approved by the Director of Public Safety and Enforcement.
(amended by by-law 2019-184)

6.4 Development

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

Part 7

Line Fences Act – Division Fence

7.1 *Line Fences Act – not applicable*

The *Line Fences Act* shall not apply to any property within the village boundary as identified in the Township of Russell Official Plan.

7.2 *Division fence – cost – shared adjoining landowners*

Despite sections 4.1 h) and i) and sections 5.1 h) and i), a division fence may be constructed on the property line subject to agreement between adjoining owners. It is the responsibility of the owner to inform the subsequent owner of this agreement.

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.

7.3 *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 7.2 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 meters(4 feet) in height. Only upon such fence being constructed will the provisions of section 7.2 of this by-law apply respecting the apportionment of costs of the said fence.

If the party erecting the fence wishes to construct a fence other than a chain link fence as described in section 7.2, without agreement from adjoining owners, then they may do so solely on their own property, and at their sole expense.

Part 8

Drainage

8.1 Drainage

No person shall contravene the Township of Russell By-Law # 79-2011, which is known as the Drainage By-Law, as amended.

Part 9

Hedges

9.1 Hedges

Where a hedge is being used as a fence it may exceed height requirements set out in this bylaw provided that it does not adversely affect or obstruct the line of sight of the driver of any vehicle approaching or stopped at the intersection and is in compliance with the Township of Russell applicable Zoning By-law as amended and any other applicable Township of Russell by-law.

Part 10

Enforcement

10.1 Authority

The Director is assigned the responsibility of administering and enforcing this By-law and may so assign duties to such persons as necessary to carry out the provisions of this By-law. Persons appointed or assigned for the purposes of administering or enforcing this By-law are Officers, and have the authority to carry out the duties assigned to Officers under this By-law, and may enforce the provisions of this By-law.

Part 11

Inspections

11.1 Right of Entry

An Officer shall have the right of entry on any property for the purpose of carrying out an inspection to determine whether this By-law is being complied with and for the enforcement of this By-law, pursuant to section 436 of the *Municipal Act, 2001*, as amended from time to time.

11.2 Inspection – documentation

For the purpose of an inspection, an Officer may:

- a) Require the production for inspection of documents 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 photographs necessary for the purposes of the inspection.

11.3 Inspection – receipt

A receipt shall be provided for any document or thing removed during an inspection and the document or thing shall be promptly returned after the copies or extracts are made.

Part 12

Order

12.1 Order to discontinue activity

If the Director or an Officer is satisfied that this By-law has been contravened, 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 of the land on which the contravention occurred, to discontinue the contravention, and/or to require the Owner to do work to correct the contravention

12.2 Order particulars

An order under subsection 12.1 shall set out;

- a) The municipal address of the property on which the contravention occurred;
- b) The date of the contravention
- c) The reasonable particulars of the contravention;
- d) A deadline, being a specific date, for compliance with the order; and
- e) state that if the work is not done in compliance with the order, the Township 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 Service of Order

An order under this section may be served:

- a) By regular mail to the last known address of the Owner of the lot where the contravention occurred;
- b) By an Officer placing a placard containing the Order in a conspicuous place on the lot where the contravention occurred; or
- c) Personally on the Owner of the lot where the contravention occurred.

Part 13A

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 Township

In default of the work required by this By-law or by an Order issued pursuant to Section 12 of this By-law not being done by the Person directed or required to do it, the Township in addition to all other remedies, may have, do or cause the work to be done at the Person`s expense and may enter upon land, at any reasonable time, for this purpose.

13.3 Remedial Action – recover costs

The Township may recover the costs incurred by it doing the work or causing it to be done 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.

Part 13B

Exemptions

Definition

1. In this part,
 - a) “Adjoining property owner” means a person who owns property within a 30 meter radius of the property line of an owner seeking an exemption;
 - b) “Committee” means Township of Russell Committee of Adjustment;
 - c) “Director” means the Township of Russell Director of Public Safety and Enforcement or Director of Planning.

Exemption applications

2. An owner may apply for an exemption from the provisions of this by-law.
3. Every exemption application shall be submitted in writing to the Director and shall contain the following information:
 - a) Property survey, or similar scaled drawing;
 - b) Site plan showing the location of all structures on the property;
 - c) A description of the proposed fence, or privacy screen;

- d) Construction and installation specifications for the proposed fence or privacy screen;
 - e) Supporting documentation from adjoining property owners, if available;
 - f) The name, address and telephone number of the owner;
 - g) If the applicant is not the owner of the property, authorization confirming the applicant is acting on owner's behalf;
 - h) Reference to the section of the by-law from which the exemption is being sought;
 - i) Reasons why the exemption is being sought; and
 - j) The applicable fee set out in the fees by-law.
4. If supporting documentation filed with the exemption application evidences that all adjoining property owners support the requested exemption and the Director determines the exemption is in keeping with the general intent of this by-law, the Director may approve the exemption.
 5. If the exemption application is submitted without support from adjoining property owners, the Director shall refer the application to the Committee for a hearing.
 6. The Director shall notify the applicant in writing at least ten (10) days in advance once a hearing date has been set. The Director shall also notify in writing at least ten (10) days in advance all property owners within a 30-meter distance.
 7. If the applicant does not attend the hearing, the committee may proceed in the absence of the applicant, and the applicant shall not be entitled to further notice.
 8. When considering an exemption application, the Committee shall have regard for,
 - a) Any special circumstances or conditions referred to in the exemption application;
 - b) Whether strict application of the provisions of this by-law would result in practical difficulties or unnecessary hardship for the applicant;
 - c) Whether the requested exemption is consistent with the general intent and purpose of this by-law;
 - d) Whether the fence, or privacy screen will alter or otherwise have a negative impact on the essential character of the area; and
 - e) Whether the fence or privacy screen causes visibility or security issues.
 9. Following a hearing, the committee shall render its decision and they may impose conditions.
 10. The decision of the committee shall be final and binding.
 11. Notice of the decision shall be given to the applicant and any other person at the hearing and/or that made written submissions.

12. The committee's decision shall take effect on the day it was made. *(amended by by-law 2018-129)*

Part 14

Offences

14.1 Offence and Penalties

- a) Any Person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*.

In addition to any penalty imposed and any other remedy, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- i) Prohibiting the continuation or repetition of the violation by the Person convicted; and
- ii) Require the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Part 15

Severability

15.1 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.

Part 16

Enactment

16.1 Short title

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

16.2 Effective date

This By-Law shall come into force and take effect upon final reading thereof.

Read a first and second time, this 19th day of November, 2012.

Read a third time and finally passed, this 19th day of November, 2012.

Mayor or Acting Mayor

Clerk or Acting Clerk