

THE CORPORATION OF THE MUNICIPALITY OF MCDougALL

BY-LAW NO. 2016-60

Being a By-law to regulate, control and prohibit fences within the Municipality of McDougall and to be referred to as the FENCE CONTROL BYLAW.

BEING A BY-LAW TO REGULATE, CONTROL AND PROHIBIT FENCES;

AUTHORITY: Municipal Act, 2001, S.O. 2001, c.25, as amended, Sections 8, 9, 10 and 425.

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the Municipality of McDougall to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 10 of subsection 10(2) authorizes by-laws respecting fences;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the Municipality of McDougall to pass by-laws providing that a person who contravenes a by-law of the Municipality of McDougall passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the Municipality of McDougall, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE, the Council of the Municipality of McDougall enacts as follows:

SHORT TITLE

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

2. DEFINITIONS

In this By-law:

"agricultural use" means:

(a) a use of the land, building, or structure for the purpose of animal husbandry, bee-keeping, dairying, fallow, field crops, forestry, fruit farming, horticulture, pasturage, poultry-keeping, or any other agriculture use; and

(b) the growing, raising, packing, treating, storing and sale of produce produced on the premises.

"building" means a structure, whether temporary or permanent, fixed to or supported by the soil and which is designed, used, or intended to be used for the accommodation, storage, or shelter of persons, animals, or chattels. A building shall not include a boundary wall, fence, retaining wall, light standard, headstone or sign;

"corner lot" means:

(a) a lot situated at the intersection of two or more streets, or a lot abutting on one or more parts of the same street, in which an interior

angle of less than 135 degrees is contained, between the front and side lot lines abutted by the said street or streets; or

- (b) a lot located on the curve of a street where the angle of intersection of the projection of the tangents of the street line does not exceed 135 degrees and for which the corner of the lot shall be deemed to be the corner point of that part of the arc of the streetline upon which the lot abuts;

“daylight triangle or sight triangle” means an area free of buildings and structures formed by measuring from the point of intersection of lot lines abutting a street on a corner lot, the distance of 10.8m along each such lot line abutting the street and joining such points with a straight line. The triangular-shaped land area between the intersection lot lines abutting a street and the straight line joining the points the required distance along the said lot lines is the daylight or sight triangle.

“Director” means the Municipality of McDougall’s Chief Building Official and his or her designate or successor;

“fence” includes a railing, wall, line of posts, wire, gate, boards, pickets, latticework, chain link, or any combination thereof, or other similar erection used to enclose or divide in whole or in part a lot, to establish a lot line or to provide privacy;

“lot” means:

(a) a parcel of land or contiguous parcels of land under one ownership, having frontage on a public street and which is described in a deed or other document legally capable of conveying an interest in land and which is on record in the Land Registry Office No. 42; or

(a) a parcel of land shown as a whole lot or block on a registered plan of subdivision within the meaning of the Planning Act, having an access on a public street, but a registered plan of subdivision for the purpose of this paragraph does not include a registered plan of subdivision which has been deemed not to be a registered plan of subdivision under a by-law passed by the Council pursuant to the Planning Act;

“lot line” means the boundary of a lot or the vertical projection thereof;

“officer” means a person appointed by the Municipality of McDougall or assigned by the Director to enforce this By-law;

“street” means:

(a) a street, road or highway which has been assumed by the Corporation, or the Ministry of Transportation and shall include such public road, street or highway as affords the principal means of access to any lots that abut thereon, but does not include a lane or private right-of-way; or

(b) a street, road or highway which has not been assumed by the Corporation, or the Ministry of Transportation and shall include the principal means of access to any mobile home or modular home site;

“street line” means the limit of the street allowance and the lot line that divides the lot from the street;

“Municipal or Municipality” means the Municipality of McDougall as the context requires;

“zone” means any classification established in the Municipality of McDougall Zoning By-law which applies to the area(s) delineated on the Zoning Map Schedules of the Zoning By-law for such classification and to which specific provisions as established by the Municipality’s Zoning By-law shall apply.

3. PROHIBITIONS

- (1) No person shall construct, maintain or permit to be maintained a fence that does not comply with the provisions of this By-law.
- (2) No person shall construct, maintain or permit to be maintained a fence:
 - (a) exceeding a height of 2.0m on a lot in any zone, except on a lot:
 - (i) in an industrial zone; or
 - (ii) used as an agricultural use;
 - (b) exceeding a height of 3.0m on a lot:
 - (i) in an industrial zone; or
 - (ii) used as an agricultural use;
 - (c) located so as to obstruct a parking space required under the Municipality’s Zoning by-laws; or
 - (d) exceeding a height of 0.9m and located within:
 - (i) a daylight triangle or sight triangle; or
 - (ii) 3.0m of a front lot line.
- (3) Despite the limits on the height of a fence under subsections (2):
 - (a) a gate may exceed such a limit by a maximum of 0.3m;
 - (b) an archway forming an entrance to or exit may exceed such a limit by 0.4m;
 - (a) a decorative cap or structural post may exceed such a limit by a maximum of 0.15 m.
 - a. No person shall maintain or permit to be maintained a fence constructed mainly of sheet metal or corrugated metal panels on a lot in a residential zone.
- (4) No person shall maintain or permit to be maintained a fence comprised of barbed wire, except:
 - (a) for a fence for an agricultural use for the keeping of livestock or the protection of livestock or crops from animals;
 - (b) on the top of a fence on a lot used for commercial or industrial purposes, provided that the barbed wire is a minimum of 2.0m above the adjacent finished ground and projects inwards towards the area enclosed by the fence; or
 - (c) on the top of a fence erected for security reasons enclosing a facility owned or operated by any level of government or a utility provider, provided that the barbed wire is a minimum of 2.0m above the adjacent finished ground and projects inwards towards the area enclosed by the fence.
- (5) No person shall maintain or permit to be maintained a fence equipped to transmit an electric current, except for a fence for an agricultural use for the keeping of livestock or the protection of

livestock or crops from animals provided that the fence meets the requirements of any applicable Canadian Standards Association Standard.

- (6) No person shall maintain or permit to be maintained a fence on Municipal property without the prior permission of the Municipality.
- (7) No person shall maintain or permit to be maintained a fence that is hazardous to persons or property.
 - (a) Snow fencing and plastic mesh fencing shall not be used as a permanent fence **AND** can only be used seasonally during the snow season of November to April of the following year **AND** for its intended purpose of controlling drifting snow **OR** can be used by the Ontario Federation of Snowmobile Clubs for controlling limits of users on registered trails.
 - (b) Every fence shall have a surface that is painted, stained, varnished or protected with a similar protective finish, unless the material itself possesses characteristics that offer protection against deterioration, such as, but not limited to, cedar, vinyl, or galvanized chain link.

4. EXISTING FENCES

- (1) Despite the provisions of this By-law, a fence that was in existence prior to Date of passing this bylaw and was in compliance with the applicable fence regulations in force under other Municipal 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.

5. LINE FENCE – APPEARANCE, SHARING OF COSTS, AND PLACEMENT

- (1) The top, bottom and intermediate rails of any fence on a property boundary shall be covered such that the rails have equal or lesser exposure on the adjoining property side as compared to the fence owner's side of the fence. All materials used in the construction of a fence that is connected to the top, intermediate or bottom rails shall be installed in a similar manner on both sides of the fence.
- (2) Each of the owners of adjoining occupied land where a fence is on a property boundary shall repair, replace or maintain just proportions of any property fence heretofore or hereafter erected which marks the boundary of their respective properties, or shall bear a just proportion of the cost of any work of erection, repair, replacement or maintenance which has been carried out.
 - (a) Property boundary fences, that are agreed upon by both owners, may be situated on the legal surveyed property boundary.
 - (b) Property boundary fences, that are NOT agreed upon by both owners, shall have a 1m setback from the property boundary on the property owned by the owner of the fence. This will ensure the owner of the fence will be able to perform maintenance on the fence without trespassing upon an adjacent property.
- (3) The minimum cost, should a fence be cost-shared, shall be for a black chainlink fence meeting the height and other standards of this by-law. Any additional costs, for materials of a higher expense, are the responsibility of the owner who wishes to construct the property fence unless otherwise agreed upon by the adjacent landowner.

- (4) Should an adjacent landowner not want to participate in the erection of a property boundary fence, the landowner wishing to construct the property fence must do so within their own property meeting all standards of this by-law.
- (5) Any differences of opinion regarding the sharing of costs on a fence are the responsibility of the landowners. It will not be the responsibility of Municipal staff to mediate a dispute between adjacent landowners. There is no obligation for an adjacent neighbour to pay for a fence which is not constructed on a property boundary.
- (6) Any differences of opinion regarding the location of property boundaries are the responsibilities of the landowners. It shall not be the responsibility of Municipal staff to mediate a dispute between adjacent landowners.

6. ADMINISTRATION AND ENFORCEMENT

- (1) The Director is assigned the responsibility of administering and enforcing this Bylaw and may so assign duties to such persons as necessary to carry out the provisions of this By-law.
- (2) Persons appointed or assigned for the purposes of administering or Enforcing this By-law are officers, have the authority to carry out the duties assigned to officers under this By-law, and may enforce the provisions of this By-law.
- (3) An officer may enter on a lot at any reasonable time 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; or
 - (c) a prohibition order made under s. 431 of the Municipal Act, 2001.
- (4) An officer may, for the purposes of the inspection under subsection (3):
 - (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.
- (5) Any cost incurred by the Municipality in exercising its authority to inspect under paragraph (4)(d), including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, may be required to be paid by the owner or occupant of the lot where the inspection takes place.
- (6) 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 where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections 6(3) and 6(4).

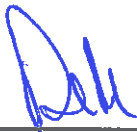
- (7) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the lot on which the contravention occurred to discontinue the contravening activity.
- (8) An order under subsection (7) shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the lot on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.
- (9) 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 occupant of the lot on which the contravention occurred to do work to correct the contravention.
- (10) An order under subsection (9) shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of lot on which the contravention occurred;
 - (b) the work to be completed; and
 - (c) the date or dates by which the work must be completed.
- (11) An order to discontinue contravening activity made under subsection (7) or an order to do work made under subsection (9) may be served:
- (a) by regular mail to the last known address of the owner or occupant 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 or occupant of the lot where the contravention occurred.
- (12) Where a person does not comply with a direction, an order or a requirement under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction, order or requirement at the person's expense.
- (13) The Municipality may recover the costs of doing a matter or thing under subsection (12) 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 interest rate of 15 per cent per year commencing on the day the Municipality incurs the costs and ending on the day the costs, including the interest, are paid in full.
- (14) The Director is authorized to give immediate effect to any direction, order or requirement where the costs of carrying out the direction, order or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the Municipality's Council may authorize.

- (15) Every person who contravenes any provision of this By-law or fails to comply with an order made under this By-law is, upon conviction, guilty of an offence and is liable:
(a) on a first conviction, to a fine of not more than \$10,000; and
(b) on any subsequent conviction, to a fine of not more than \$25,000.
- (16) Despite subsection (15), where the person convicted is a corporation:
(a) the maximum fine in paragraph (15)(a) is \$50,000; and
(b) the maximum fine in paragraph (15)(b) is \$100,000.
- (17) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

7. TRANSITION, REPEAL, COMING INTO FORCE, ETC.

- (1) All measurements in this By-law are given in the metric short form.
- (2) If a court of competent jurisdiction declares any provision or provisions of this Bylaw invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

Read a first and second time this 2nd day of November, 2016.



Mayor

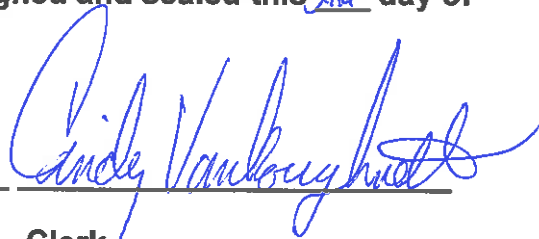


Clerk

Read a third and time, passed, signed and sealed this 2nd day of November, 2016.



Mayor



Clerk