



BY-LAW 2012-xx

The Fence By-law

WHEREAS the Council of The Corporation of the Town of Markham (hereinafter the “Town”) is authorized by section 9, subsection 11 (1), paragraph 11(3) 7 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, (hereinafter the “*Municipal Act*”) provides that a municipality may pass by-laws within the sphere of jurisdiction entitled Structures, including fences and signs;

NOW THEREFORE, THE COUNCIL FOR THE CORPORATION OF THE TOWN OF MARKHAM, HEARBY ENACTS AS FOLLOWS:

1. **Subsection 2.1** is amended by adding the following definition:
 - (1) “**Manager**” means the Manager, By-law Enforcement & Licencing or his/her designate;
 - (2) “**Officer**” means a person designated by Council to enforce by-laws of the municipality and includes members of York Regional Police;
 - (3) “**Unsafe Condition**” is a descriptive phrase for structures or material, that are in a condition or state of repair that causes a hazard to life, limb or health of any person authorized or expected to be on or near the land in question.
2. **Section 6.0 General Prohibitions** is amended by adding the following sections:
 - 6.4 No person shall erect, cause to erect, have or maintain a fence that creates an *unsafe condition*.
 - 6.5 No person shall erect, cause to erect, have or maintain a fence which, by reason of location or design, obstructs the vision of drivers, either when leaving a roadway or when entering a roadway from another roadway or driveway, or which obstructs or detracts from the visibility, or effectiveness, of any traffic sign or control device on a public street or which, for any other reason, constitutes a hazard.

3. **Section 8.0 Exemptions and Exceptions** is repealed and replaced with the following:

SECTION 8.0 EXEMPTIONS AND EXCEPTIONS

- 8.1 (1) Any property owner or agent authorized by a property owner may apply for an exemption from the provisions contained in Part 1 of this by-law.
- (2) Every application for an exemption shall be in writing and may contain the following supporting documentation:
- (a) a property survey;
 - (b) a site plan;
 - (c) specifications pertaining to the description of the fence;
 - (d) specifications pertaining to the construction and installation of the fence;
 - (e) consent from the abutting neighbours to the exemption request; and,
 - (f) the application fee.
- (3) An application for an exemption shall include:
- (a) the name, address and telephone number of the applicant;
 - (b) reference to the section of the by-law from which the exemption is being sought;
 - (c) a statement whether the proposed fence or privacy screen will be temporary or permanent; and,
 - (d) reasons why the exemption is being sought.
- (4) An application for an exemption, completed in accordance with section 8(2) and 8(3), shall be delivered to the *Manager*.
- (5) The *Manager* may grant an exemption in whole or in part, with terms and conditions, subject to the provisions of this By-law.

- (6) In considering the completed application for an exemption, the *Manager* shall take into account the following:
 - (a) any special circumstances or conditions applying to the fence or privacy screen referred to in the application;
 - (b) whether strict application of the provisions of this by-law would result in practical difficulties or unnecessary hardship to the applicant; and,
 - (c) whether the fence or privacy screen may affect surrounding sight lines and create, or potentially create, a hazardous condition for persons or vehicles.
 - (7) Notwithstanding that the authority to grant an exemption is delegated to the *Manager*, and that he or she may have already exercised the delegated power, Council shall retain the right to exercise the authority to grant or deny an exemption in accordance with the conditions set out in section 8(5) and 8(6) of the By-law if an appeal of the Manager's decision is received by the Clerk within 10 days of the decision.
- 8.2 This by-law shall not apply to municipally approved noise attenuation fences, walls or barriers, or railway fences, walls or barriers.
- 8.3 Notwithstanding the provisions of this by-law, any fence that was lawfully existing prior to the date of the enactment of this by-law shall be deemed to comply with this by-law and may be maintained or reconstructed to the same height and dimensions as previously existed.
- 8.4 The following provisions shall apply to the lands shown on Schedules 'A' and 'B' hereto:
 - (a) Notwithstanding the provisions of Section 2.0 (r) the FRONT YARD means the YARD between the nearest main wall of any building or structure on the lot and the west lot line.
 - (b) Notwithstanding the provisions of Section 2.0 (s) the REAR YARD means the YARD between the nearest main wall of any building or structure on the lot and the east lot line

- (c) Notwithstanding the provisions of Section 4.4, the maximum height of a fence located in the REAR YARD shall be 1.50 meters (5 feet) except that the maximum height of a fence in a REAR YARD shall be 1.80 meters (6 feet) where a detached garage is located within the REAR YARD.

4. **Section 15.0 Penalty and Repeals** and **Section 16.0** is repealed and replaced with the following Sections:

SECTION 15.0 ADMINISTRATION AND ENFORCEMENT

- 15.1 The Manager and his/her delegate is responsible for the administration and enforcement of this by-law.
- 15.2 For the purpose of conducting an inspection to determine compliance with this by-law, an Order, a permit or any condition of a permit, an Officer may, upon producing appropriate identification when requested, at any reasonable time, enter and inspect any lands or property, to determine whether the provisions of this by-law, an Order issued under this by-law or a permit or condition of a permit issued under this by-law, have been complied with.
- 15.3 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act. Or under a by-law passed under this Act. 2006, c. 32, Sched. A, s. 184.

SECTION 16.0 POWERS OF ENTRY

- 16.1 The Town may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are complied with:
 - (a) the provisions of this by-law;
 - (b) an Order issued under this by-law.
- 16.2 Where an inspection is conducted by the Town, the person conducting the inspection 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 including their name, address, phone number and identification; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purpose of the inspection

16.3 The Town may undertake an inspection pursuant to an order issued under s.438 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended.

16.4 The Town's Power of Entry may be exercised by an employee, officer or agent of the Town or by members of York Regional Police.

SECTION 17.0 ORDERS AND REMEDIAL ACTION

17.1 If a person contravenes any of the provisions of this by-law, the Town may issue an Order to Discontinue to the person who contravened or permitted the contravention of this by-law. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the order. The order may be served in accordance with the service provisions contained in this by-law.

17.2 If a person has contravened a provision of this by-law, the Town may issue a Work Order to the person who contravened or permitted the contravention of this by-law, as well as to the owner of the lot on which the contravention occurred, to do work to correct the contravention. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the order. The order may also provide that if the person or owner fails to correct the contravention, the Town may do the work to correct the contravention, including the removal of the fence, at the expense of the owner. The order may be served in accordance with the service provisions contained in this by-law.

17.3 If the Town has issued an order directing or requiring a person or an owner to do a matter or thing to correct a contravention of this by-law, and the person or the owner has failed to correct the contravention, the

Town may enter upon the lot between the hours of 6:00 a.m. and 9:00 p.m. Monday to Friday to do all work necessary to correct the contravention. The Town may recover the cost of doing the necessary work from the person directed or required to do it by action or by adding the costs to the tax roll of the owner and collecting them in the same manner as property taxes.

- 17.4 An order issued under this by-law may be served personally or may be served by registered mail sent to the last known mailing address of the person indicated on the Town's assessment roll. If an order is served on a person by registered mail, it shall be deemed to have been served on the person on the 5th day after mailing of the order, which deemed service may be rebutted by the person proving, on a balance of probabilities, that they did not receive the order.

SECTION 18.0 PENALTY PROVISIONS

- 18.1 Every person who contravenes a provision of this by-law, including an order issued under this by-law, is guilty of an offence and upon conviction pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P.33, is liable to the maximum fine pursuant to the said Act.

SECTION 19.0 SEVERABILITY

- 19.1 If a court or tribunal of competent jurisdiction declares any provision, provisions or part of a provision of this by-law to be illegal or unenforceable for any reason, such provision, provisions or part of a provision shall be severed and all other provisions of this by-law shall be deemed to be separate and independent therefrom and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 20.0

- 20.1 This By-law shall come into force and take effect on the date it is passed.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
___DAY OF _____ 2012

X

KIMBERLEY KITTERINGHAM
TOWN CLEK

X

FRANK SCARPITTI
MAYOR