

THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING

BY-LAW NO. 2009/38

**BEING A BYLAW TO REGULATE FENCES
(EXCLUDING SWIMMING POOL FENCES)**

WHEREAS Section 10(2) of the Municipal Act S.O., 2001, c. 25 authorizes Council to pass by-law respecting structures, including fences and signs;

AND WHEREAS Section 427(1) of the Municipal Act S.O., 2001 c. 25 provides that a municipality may proceed to do things at a person's expense, which that person is otherwise required to do under a by-law or otherwise failed to do;

AND WHEREAS by By-law 2005/40 the Corporation of the Municipality of West Nipissing established a by-law regulating fencing around swimming pools.

AND WHEREAS the Corporation of the Municipality of West Nipissing now considers it desirable to enact a by-law to regulate all other fencing in the Municipality of West Nipissing (except swimming pool fencing which shall continue to be regulated By by-law 2005/40);

NOW THEREFORE the Council of the Corporation of the Municipality of West Nipissing hereby adopts the following as a by-law:

1. That Council adopts a bylaw to regulate the height, location and description of lawful fences within the Municipality of West Nipissing identified as Schedule "A" hereto attached and forming part of this by-law.
2. That this by-law shall come into force and effect and take effect on the date of its final passing;
3. That the clerk of the Municipality of West Nipissing is hereby authorized to make any minor modifications or corrections of an administrative, numerical, grammatical, semantically or descriptive nature or kind to this bylaw as may be deemed necessary after the passage of this by-law.

**READ A FIRST TIME AND CONSIDERED READ A SECOND AND THIRD TIME
AND PASSED AS SUCH IN OPEN COUNCIL THIS 16TH DAY OF JUNE 2009.**

MAYOR

CLERK

**CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING
SCHEDULE "A" TO BY-LAW NO. 2009/38**

BEING A BYLAW TO REGULATE FENCES

INDEX

Part 1 – Definitions

Part 2 – Application

Part 3 – Administration

Part 4 – Permits and Approvals

Part 5 – Regulations

Part 6 – Line Fences Act

Part 7 – Exemptions

Part 8 – Enforcement

Part 9 – Validity

Part 1
DEFINITIONS OF WORDS AND PHRASES:

1.01 Definitions of words and phrases used in this by-law that are not included in the list of definitions in this section shall have the meanings which are commonly assigned to them in the context in which they are used in this by-law.

1.02 The words defined in this section have the following meaning for the purposes of this by-law.

“Agricultural Zone” means the area of land designated for agricultural use as prescribed in the Zoning By-law.

“Boundary Fence” means a fence to mark the lot line between an owner’s land and adjoining lands.

“Building By-law” means the Municipality of West Nipissing by-law and amendments thereto and any subsequent by-laws which may be enacted in substitution thereof.

“Building Code Act” means the Building Code Act, S.O. 1992, c.25

“Commercial Zone” means the area of land designated for commercial use as prescribed in the Zoning By-law.

“Council” means the Council of the Municipality of West Nipissing.

“Farm Fence” means a fence erected for the purpose of containing livestock, enclosing crops, water areas, woodlots, buildings, fields or laneways for the operation of agriculture.

“Fence” means a hedge or thick growth of shrubs or trees, a structure or partition made of wood, metal, or other substance that is constructed for any purpose, such as marking the boundary of property, enclosing a property, providing privacy, preventing access by people or animals, or dividing property into sections, and includes every door, gate and other closure that forms part of a fence.

“Grade” means the elevation of the surface of the ground where it abuts a fence or other structure.

“Height” means the vertical distance between natural grade and the top of the fence.

“Industrial Zone” means the area of land designated for industrial use as prescribed in the Zoning By-law.

“Inhabitants” means those person(s) occupying or residing within the municipality.

“Line Fences Act” means the Line Fences Act, R.S.O. 1990, Chapter L.17 as amended.

“Lot Line” means the boundary line between adjoining properties and or the boundary line between a property and a highway, road street, avenue, laneway, watercourse etc.

a) “Front Lot Line” means,

- (i) in the case of an interior lot, the lot line dividing the lot from the street;
- (ii) in the case of a corner lot, the shorter lot line abutting a street shall be deemed to be the front lot line except where the lot lines abutting a street are the same length, the lot line used for the principal entrance to the lot shall be deemed to be the front lot line;
- (iii) In the case of a through lot, the lot line used for the principal entrance to the lot shall be deemed to be the front lot line;
- (iv) in case of a standard waterfront lot, the lot line which fronts on the water shall be deemed to be the front lot line;

- b) **“Flank Lot Line”** means any lot line other than a front lot line which is also a street line.
- c) **“Rear Lot Line”** means any lot line which is not a front lot line, a flank lot line or a side lot line.
- d) **“Side Lot Line”** means a lot line which intersects a front lot line or a flank lot line provided that, if any side lot line or portion thereof is the rear lot line of an abutting lot, such lot line or portion thereof shall be deemed to be a rear lot line.

“Maintain” means to carry out repairs of any part or parts of a swimming pool fence so that it can properly perform to intended function.

“Municipality” means the Corporation of the Municipality of West Nipissing.

“Natural Grade” means the average naturally occurring elevation of ground level within 3 meters (9.84 ft) horizontally of each side of a fence.

“Owner” means the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would so receive the rent if such land and premise were lent.

“Person” means an individual, firm or corporation.

“Property” means a parcel of land and any building or other structure on the land.

“Property Standards Officer” means the person or persons duly appointed from time to time by Council to enforce regulatory by-laws of the Municipality.

“Residential Zone” means those areas of land designated for residential use as prescribed in the Zoning By-law.

“Rural Zone” means the area of land designated for rural use as prescribed in the Zoning By-law.

“Rural Residential Zone” means the area of lands designated for rural residential use as prescribed in the Zoning By-law as well as those lands in rural or agriculturally designated areas of the municipality where lots are equal to or less than one acre in size.

“Sight Triangle” means that area lying within the triangle bounded by a line running from two points located 9 meters (29.52 feet) from the corner of any lot (being the hypotenuse of the triangle), and the lines from those two points to the same corner of the lot, where the lot corner is adjacent to an intersection of two or more streets, roads, highways or public thoroughfares.

“Yard” means a space, appurtenant to a building, structure or excavation, located on the same lot as the building, structure or excavation, and which space is open, uncovered and unoccupied from the ground to the sky except for such accessory buildings, structures or uses as are specifically permitted.

- a) **“Front Yard”** means a yard located between the front lot line and the nearest part of any excavation or main building on the lot and extending across the full width of the lot.
- b) **“Flank Yard”** means a yard located between a flank lot line and the nearest part of any excavation or main building on the lot and extending for the full length of such flank lot line, but excluding any front yard.
- c) **“Rear Yard”** means a yard located between a rear lot line and the nearest part of any excavation or main building on the lot and extending for the full length of such rear lot line, but excluding any front yard or flank yard.
- d) **“Side Yard”** means a yard located between a side lot line and the nearest part of any excavation or main building on the lot and extending for the full length of such side lot line, but excluding any front yard, flank yard or rear yard.

“Zone” means an area designated on a Zoning Map Schedule and established by the Zoning By-law for a specific use.

“Zoning By-Law” means all current by-laws and amendments thereto and any subsequent by-laws which may be enacted in substitution therefore under the Planning Act R.S.O. 1990 c.P.13 (as amended) with respect to land use within the Municipality of West Nipissing.

Part 2 APPLICATION

- 2.1 The requirements of this by-law apply to all property within the geographic limits of the Municipality of West Nipissing, except where otherwise provided.
- 2.2 If there is a conflict between a requirement established by another by-law of the Municipality and a requirement of this by-law, the requirement that establishes the higher standard in terms of protecting the health, safety and well-being of the inhabitants of the Municipality prevails to the extent of the conflicts.
- 2.3 This by-law shall apply to all fences constructed or replaced in the Municipality on or after the date of adoption.

Part 3 ADMINISTRATION

- 3.1 The Property Standards Officer is responsible for the administration and enforcement of this by-law.

Part 4 PERMITS AND APPROVALS

- 4.1 No permit is required pursuant to this by-law for the construction of a fence.

Part 5 REGULATIONS

- 5.1 No person shall erect, construct, rebuild, reconstruct, alter, maintain or move or cause, suffer or permit the erecting, construction, rebuilding, reconstructing, altering, maintaining or moving of any fence contrary to the provisions set out below, except as provided in Part 7-Exemptions.

Height and Description of Lawful Fences

- 5.2 No person shall construct a fence that is greater than 2 meters (6.56 feet) in height above natural grade on or around any property in all zones.
- 5.3 No person shall construct a fence in a residential or rural residential zone that is greater than 1.2 meter (4.00 feet) in height above natural grade within any required front yard or flank yard as prescribed in the Zoning by-law.
- 5.4 Notwithstanding the requirements of Section 5.2 and 5.3, the maximum height of a fence above natural grade does not apply in an industrial or institutional zone or on any property in any zone where the fence is constructed to surround a public utility installation for the generation and distribution of electricity, a pipeline valve, storage site for chemicals and explosives, sludge pit or other property used for similar or related purposes or other locations where there is a risk to the public as determined by the Property Standards Officer.
- 5.5 A fence of chain link construction where permitted under Section 5.4 shall comprise of chain link with diamond mesh of not greater than 38 millimeters (1.5 inches), consisting of 12 gauge galvanized steel wire or 14 gauge galvanized steel wire covered with vinyl or

another coating that is acceptable to the Property Standards Officer which forms a total thickness equivalent to 12 gauge galvanized steel wire.

Sight Triangle

- 5.6 Notwithstanding Section 5.3 and except where permitted by Sec 5.4, no person shall construct a fence within the sight triangle that is greater than 1.2 meters (4.00 feet) in height.

Barbed Wire

- 5.7 No person shall construct a fence consisting wholly or partly of barbed wire or other barbed material in a residential zone or on any boundary line in any zone that adjoins a property in a residential, institutional or recreational zone.
- 5.8 Notwithstanding Section 5.7 a farm fence constructed in a rural or agricultural zone may consist of barbed wire.
- 5.9 Notwithstanding Section 5.10 a person may construct a fence consisting partly of barbed wire or other barb material on or around an industrial property, public utility installation for the generation and distribution of electricity, pipeline valve, storage site for chemicals and explosives, sludge pit or other property used for similar or related purposes, provided such barbed wire or other barbed material is cantilevered from the top of such fence in a direction away from adjacent properties, and is at a height of not less than 1.83 meters (6 feet) above natural grade.

Electrified Wire

- 5.10 No person shall construct a fence consisting wholly or partly of electrified wire material in a residential zone or boundary line of any property in any zone adjoins a property in a residential or institutional zone.

Part 6 LINE FENCES ACT

- 6.1 The provisions of the Line Fences Act, R.S.O.1990, c.L. 19, as amended, shall apply to all fences within the municipality.

Part 7 EXEMPTIONS

- 7.1 The requirements of this by-law do not apply to a fence that was constructed lawfully prior to the day on which this by-law came into force.
- 7.2 Notwithstanding Section 7.1, the requirements of this by-law shall apply when any change to a fence is made after the day on which this by-law came into force.
- 7.3 The requirements of this by-law with respect to the height of fence do not apply to a farm fence in agricultural or rural zones that is necessary for the raising of certain types of animals or for another agricultural purpose.
- 7.4 The requirements of this by-law with respect to the height of a fence do not apply to a fence constructed for the purpose of protecting the public from the danger of flying or falling objects including baseballs or golf balls.
- 7.5 The requirements of this by-law with respect to the height of a fence do not apply to fence on or surrounding municipally owned property.

Part 8
ENFORCEMENT

- 8.1.1 Every person who contravenes any section of this By-law is, upon conviction, guilty of an offence and subject to a penalty as provided under the Provincial Offences Act.
- 8.1.2 No person shall erect, construct, rebuild, reconstruct, alter, maintain or move or cause, suffer or permit the erecting, construction, rebuilding, reconstructing, altering, maintaining or moving of any fence contrary to the provisions of this By-law.
- 8.2 Each new day of continuing offence will be considered a new offence.
- 8.3 The Court in which conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the Person convicted, and such order shall be in addition to any other penalty imposed and enacted as such.

Part 9
VALIDITY

- 9.1 It is declared that notwithstanding that any section or sections of this by-law, or parts thereof, may be found by any court of law to be bad or illegal or beyond the power of the Council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this by-law are separate and independent from each other and enacted as such.

THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING

**SET FINE SCHEDULE "B" TO BY-LAW 2009/38
PART 1 PROVINCIAL OFFENCES ACT**

By-law 2009/38 re: To regulate fencing excluding swimming pool fences

ITEM	COLUMN 1 SHORT FORM WORDING	COLUMN 2 PROVISION CREATING OR DEFINING OFFENCE	COLUMN 3 SET FINE
1	Construct a fence that does not comply with requirements of by-law	Schedule 'A' Part 5 Section 5.1	\$ 175.00
2	Construct a fence greater than 2 meters (6.56') high	Schedule 'A' Part 5 Section 5.2	\$ 175.00
3	In residential area, construct fence greater than 1.2 meter (4.00 ') high	Schedule 'A' Part 5 Section 5.3	\$ 175.00
4	Construct a chain link fence with diamond mesh greater than 38 mm. (1.5 ")	Schedule 'A' Part 5 Section 5.5	\$ 175.00
5	Construct fence with sight triangle greater than 1.2 meters (4') high	Schedule 'A' Part 5 Section 5.6	\$ 175.00
6	Construct a barbed-wire fence in residential zone	Schedule 'A' Part 5 Section 5.7	\$ 175.00
7	Construct a barbed-wire fence on boundary line/zone adjoining residential property	Schedule 'A' Part 5 Section 5.7	\$ 175.00
8	Construct a barbed-wire fence on boundary line/zone adjoining institutional property	Schedule 'A' Part 5 Section 5.7	\$ 175.00
9	Construct a barbed-wire fence on boundary line/zone adjoining recreational property	Schedule 'A' Part 5 Section 5.7	\$ 175.00
10	Construct fence of wholly/partly electrified wire material in residential zone	Schedule 'A' Part 5 Section 5.10	\$ 175.00
11	Construct fence of wholly/partly electrified wire material on boundary line adjoining residential zone	Schedule 'A' Part 5 Section 5.10	\$ 175.00
12	Construct fence of wholly/partly electrified wire material on boundary line adjoining industrial zone	Schedule 'A' Part 5 Section 5.10	\$ 175.00
13	Erect fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
14	Re-build fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
15	Reconstruct fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
16	Alter fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
17	Maintain fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
18	Cause/suffer/permit construction of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
19	Cause/suffer/permit erecting of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
20	Cause/suffer/permit rebuilding of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
21	Cause/suffer/permit reconstructing of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
	COLUMN 1	COLUMN 2	COLUMN 3

ITEM	SHORT FORM WORDING	OFFENCE CREATING PROVISION	SET FINE
22	Cause/suffer/permit altering of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
23	Cause/suffer/permit maintaining of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
24	Cause/suffer/permit moving of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00
25	Move fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	\$ 175.00

NOTE: Penalty provision for the offences indicated above is Section 8.1.1 of By-law No. 2009/38 a certified copy of which has been filed.

**SET FINE SCHEDULE "B" TO BY-LAW 2009/38
PART 1 PROVINCIAL OFFENCES ACT**

By-law 2009/38 re: To regulate fencing excluding swimming pool fences

ITEM	COLUMN 1 SHORT FORM WORDING	COLUMN 2 OFFENCE CREATING PROVISION	COLUMN 3 SET FINE
1	Construct a fence that does not comply with requirements of by-law	Schedule 'A' Part 5 Section 5.1 and Part 8 Section 8.1.2	
2	Construct a fence greater than 2 meters (6.56') high	Schedule 'A' Part 5 Section 5.2	
3	In residential area, construct fence greater than 1.2 meter (4.00 ') high	Schedule 'A' Part 5 Section 5.3	
4	Construct a chain link fence with diamond mesh greater than 38 mm. (1.5 ")	Schedule 'A' Part 5 Section 5.5	
5	Construct fence with sight triangle greater than 1.2 meters (4') high	Schedule 'A' Part 5 Section 5.6	
6	Construct a barbed-wire fence in residential zone	Schedule 'A' Part 5 Section 5.7	
7	Construct a barbed-wire fence on boundary line/zone adjoining residential property	Schedule 'A' Part 5 Section 5.7	
8	Construct a barbed-wire fence on boundary line/zone adjoining institutional property	Schedule 'A' Part 5 Section 5.7	
9	Construct a barbed-wire fence on boundary line/zone adjoining recreational property	Schedule 'A' Part 5 Section 5.7	
10	Construct fence of wholly/partly electrified wire material in residential zone	Schedule 'A' Part 5 Section 5.10	
11	Construct fence of wholly/partly electrified wire material on boundary line adjoining residential zone	Schedule 'A' Part 5 Section 5.10	
12	Construct fence of wholly/partly electrified wire material on boundary line adjoining industrial zone	Schedule 'A' Part 5 Section 5.10	
13	Erect fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
14	Re-build fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
15	Reconstruct fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
16	Alter fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
17	Maintain fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
18	Cause/suffer/permit construction of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
19	Cause/suffer/permit erecting of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
20	Cause/suffer/permit rebuilding of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
21	Cause/suffer/permit reconstructing of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	

ITEM	COLUMN 1 SHORT FORM WORDING	COLUMN 2 OFFENCE CREATING PROVISION	COLUMN 3 SET FINE
22	Cause/suffer/permit altering of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
23	Cause/suffer/permit maintaining of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
24	Cause/suffer/permit moving of fence contrary to fencing by-law	Schedule 'A' Part 8 Section 8.1.2	
25	Move fence contrary to provisions of fencing by-law	Schedule 'A' Part 8 Section 8.1.2	

NOTE: Penalty provision for the offences indicated above is Section 8.1.1 of By-law No. 2009/38 a certified copy of which has been filed.