



## THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY

### BY-LAW NUMBER 2019-130

#### Being a By-law to Prescribe the Height and Description of Fences

**WHEREAS** Section 11 (3) 7 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a lower-tier Municipality may pass by-laws respecting structures, including fences and signs;

**AND WHEREAS** Section 8 of the Municipal Act provides that the powers of a municipality as granted by the Act or any other Act shall be interpreted broadly so as to (a) enable the municipality to govern its affairs as it considers appropriate and, (b) enhance the municipalities ability to respond to municipal issues;

**AND WHEREAS** Section 425 (1) of the Municipal Act authorizes a municipality to pass by-laws providing that a person who contravenes a by-law passed under this act is guilty of an offence;

**AND WHEREAS** Section 436 (1) of the Municipal Act authorizes a municipality to pass by-laws to authorize the right to enter land under certain circumstances;

**AND WHEREAS** Section 446 of the Municipal Act, as amended, a municipality may enact a by-law to require that a matter or thing be done and in default, the matter or thing may be done by the municipality at the persons expense and further that the costs of doing so may be added to the tax roll and collected in the same manner as taxes;

**AND WHEREAS** Section 98 (1) and (2) of the Municipal Act, provides that a by-law may be passed by a municipality stating that the Line Fence Act, R.S.O. Ch. L.17, as amended does not apply to all or part of the Town, subject to the continuing applicability of Section 20 of the Line Fence Act;

**AND WHEREAS** it is deemed expedient to exclude the Town from the provisions of the Line Fences Act Line Fence Act, R.S.O. Ch. L.17, as amended;

**AND WHEREAS** the Council of the Corporation of the Town of East Gwillimbury deems it necessary to regulate the building and maintenance of structures including: fences, noise attenuation barriers and privacy screens within the Town of East Gwillimbury;

**AND WHEREAS** it has been deemed by Council of the Corporation of the Town of East Gwillimbury necessary to pass a by-law to regulate and prohibit livestock being at large;

**NOW THEREFORE**, the Council of the Corporation of the Town of East Gwillimbury enacts as follows:

## 1.0 DEFINITIONS

1.1 In this by-law:

- (a) **“Appeal Committee”** means the Appeal Committee established by the corporation of the Town of East Gwillimbury.
- (b) **“Building”** means;
  - (i) a structure, temporary or permanent, consisting of a wall, roof and floor or any of them, or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto;
  - (ii) structures designated in the Ontario Building Code, as amended;
  - (iii) a tent as specified in the Ontario Building Code;
  - (iv) a **Building** and structure as defined in the **Town Zoning By-law**, as amended.
- (d) **“Council”** means the elected council of the Corporation of the Town of East Gwillimbury.
- (e) **“Corner Lot”** means a lot situated at the intersection of and abutting onto two or more streets or two sections of the same street, provided that the angle of intersection of such street(s) is not more than one hundred and thirty-five (135) degrees.
- (f) **“Daylighting Triangle”** means the area within a triangle formed by measuring a prescribed distance along two specified intersecting lines and a third line joining the terminal points of the two measured lines.
- (g) **“Deck”** means a platform, with no solid roof or walls, which is constructed on piers or a foundation above finished **Grade** adjacent to a ground floor or walkout basement wall, used as an outdoor living area.
- (h) **“Division Fence”** means a **Fence** used to define a property **Lot Line**.

- (i) **“Driveway Sight Triangle”** means an area of land contained within and determined by measuring from the point of intersection of a **Street Line** and a driveway, a distance of 4 metres (13.1 feet) along such **Street Line** and a 6 metres (19.7 feet) along such driveway, joining such points with a straight line to form a triangle.
- (j) **“Erect”** means to construct, put up, assemble, install, alter, reconstruct or replace a **Fence**, or to cause or permit another **Person** to do so, and does not include repair if repair involves less than fifty percent (50%) of the **Fence** along a lot line.
- (k) **“Exterior Side Lot Line”** means a **Side Lot Line** immediately adjoining a street on a **Corner Lot**.
- (l) **“Fence”** shall mean any structure constructed of building materials designed for exterior use including but not limited to posts, boards, panels, pickets, wood, fiberglass, plastics, metal, lattice, rails, wire, chain link, masonry or similar materials or any combination thereof which delineates any yard or outdoor area but does not include arbours.
- (m) **“Front Lot Line”** means:
  - (i) In the case of an **Interior Lot**, shall be the **Lot Line** abutting a street;
  - (ii) In the case of a **Corner Lot**, shall be the shorter **Lot Line** that abuts a street;
  - (iii) In the case of a **Corner Lot** with two **Street Lines** of equal length, shall be the **Lot Line** which abuts a **Regional Road**. In the case that both abutting streets are under the same jurisdiction or are of the same width, the **Town** may designate either **Street Line** as the front **Lot Line**.
- (n) **“Grade”** means the level of the ground adjacent to the outside wall of a **Building**.
- (o) **“Height”** means the vertical distance between the established **Grade** on either side of the **Fence**, or **Privacy Screen** and the highest point of said **Fence**, or **Privacy Screen**. Where the **Grade** levels are not the same on both sides of the **Fence**, or **Privacy Screen** the higher of such levels shall be considered the established **Grade** for the purposes of the **Height**. In case of a retaining wall, **Height** shall mean the perpendicular distance between the top of the retaining wall and the highest point of the **Fence** directly above.

- (p) **“Lines Fences Act”** means **Line Fence Act**. R.S.O. 1990, c. L.17, as amended, from time to time.
- (q) **“Livestock”** includes cattle, goats, sheep, swine, horses, rabbits, mink, foxes, reptiles, domestic fowl and other animals, excluding dogs and cats.
- (r) **“Lot Frontage”** means the continuous horizontal distance between the **Side Lot Lines** measured at right angles. Where the **Front Lot Line** is not a straight line, or where the **Side Lot Lines** are not parallel, the **Lot Frontage** shall be measured, by a line 7.5 metres (25 feet) back from and parallel to the chord of the **Lot Frontage**. Such chord is a straight line obtained by joining the two points of intersection between the **Side Lot Lines** and the **Front Lot Line**.
- (s) **“Lot Line”** means a boundary of a lot including its vertical projection.
- (t) **“Interior Lot”** means a lot situated between adjacent lots and having access to one street.
- (u) **“Maintain”** means to carry out repairs of any parts of a **Fence** so that it can properly perform its intended function.
- (v) **“Manager”** means the Manager, By-law Enforcement Services of the **Town** and his/her designate.
- (w) **“Officer”** means a Municipal Law Enforcement Officer or designate.
- (x) **“Outdoor Storage”** means an area of land used for the outdoor storage of goods and materials in the open air or in portable objects, such as shipping containers, in ancillary to the main use of lot.
- (y) **“Owner”** means the owner, lessee or occupier of a lot.
- (z) **“Person”** includes an individual, association, organization, partnership, municipality or other corporation and includes an agent or employee of any of them.
- (aa) **“Privacy Screen”** means a visual barrier constructed of building materials designed for exterior use including but not limited to posts, boards, panels, pilings, lattice, rails, wire, chain link, masonry or similar materials or any combination thereof used to shield any part of a lot from view from any adjacent lot or highway.
- (bb) **“Rear Lot Line”** means the **Lot Line** or intersection of the **Side Lot Line**, opposite to, and most distant from, the **Front Lot Line**.

- (cc) "**Regional Road**" means a highway designated as a **Regional Road** by The Regional Municipality of York.
- (dd) "**Scrap or Salvage Yard**" means a lot and/or premises used for the storage and/or handling of scrap material, which without limiting the generality of the foregoing, includes waste paper, rags, bottles, used bicycles, motor vehicles, tires, metal and/or other scrap material and salvage.
- (ee) "**Setback**" means the required **Setback** for that **Zone** as per the **Town Zoning By-law**, as amended.
- (ff) "**Sight Triangle**" means a triangular area on a **Corner Lot** as determined by measuring from the point of intersection of two **Street Lines**, the distance required by the **Town's** Engineering Design Standards and Region of York requirements, whichever is greater, along each such **Street Line** and joining such points with a straight line. In the case of a **Corner Lot** with a **Sight Triangle**, the **Exterior Side Lot Line** is deemed to extend to its hypothetical point of intersection with the extension of the **Front lot Line** and /or **Rear Lot Line** for the purposes of calculating the **Lot Frontage, Front, Rear and Exterior Side yard Setbacks**.
- (gg) "**Side Lot Line**" means a **Lot Line**, other than a front or rear **Lot Line**. In case of a **Corner Lot**, the **Lot Line** that abuts a street shall be identified as the **Exterior Side Lot Line**.
- (hh) "**Street Line**" means the boundary between a public or private street and a lot.
- (ii) "**Snow Fencing**" means a **Fence** commonly used for the control of snow and which is usually constructed of plastic mesh, lightweight, wood strip, or wire fencing.
- (jj) "**Through Lot**" means a lot bounded on two opposite sides by streets. If any lot qualifies as being a **Corner Lot** and a **Through Lot** as hereinbefore defined, such lot shall be deemed a **Corner Lot** for the purposes of this by-law.
- (kk) "**Town**" means the Corporation of the Town of East Gwillimbury.
- (ll) "**Water Gate**" means a gate, or valve, by which a flow of water is permitted, prevented, or regulated.
- (mm) "**Wrought Iron**" means a **Fence** constructed of metal.

- (nn) "**Zone**" shall mean the designation given such land in the **Town Zoning By-law**, as amended.
- (oo) "**Zoning By-law**" means the Zoning By-law of the **Town** passed under the Planning Act, R.S.O. 1990 as amended, from time to time.

## 2.0 GENERAL PROVISIONS

- 2.1 No **Person** shall have, **Erect, Maintain** or permit a **Fence, Privacy Screen** or a **Division Fence** or cause a **Fence, Privacy Screen** or **Division Fence** to be **Erected** on any lot except in compliance with the provisions of this by-law.
- 2.2 No **Person** shall have, **Erect, Maintain** or permit to be **Erected** or **Maintain** the following:
  - a) **Snow Fencing** as part or in place of **Fencing**, unless said **Fencing** is used to temporarily control snow, and or to protect property undergoing construction for which an approved **Town** permit is in effect. Such **Snow Fencing** shall be removed upon completion of construction;
  - b) A **Fence** comprised of sheet metal or corrugated metal panel members;
  - c) A **Fence** that contains or is constructed of any hazardous material such as razor wire, barbed wire, or any sharp projections capable of causing physical injury to humans or animals;
  - d) A **Fence** or any attachment to a **Fence** which may be used as a conductor of an electrical current;
  - e) A **Fence** that uses materials not usually intended for use in permanent **Fencing**, unless specifically permitted by this by-law or any other **Town** by-law;
  - f) A **Fence** on any lands owned by the **Town**, or on a highway, or road allowance, opened or unopened, or **Town** right-of-way, or **Town** easement.
- 2.3 Notwithstanding Subsection 2.2 c), the use of barbed wire or other bared or sharp materials is permitted:
  - a) On agriculturally **Zoned** lands which necessarily require the use of barbed wire on **Fences** as a part of active agricultural activity;
  - b) For **Fences** located in an industrial **Zone** and provided that such materials are used at a **Height** of at least 1.83 m (6 ft.) above the finished **Grade**. The barbed wire shall project inwards to the area enclosed by the **Fence**;

- c) On top of a **Fence Erected** for security purposes, around any facility owned, operated or maintained by a Municipal, Provincial or Federal Government or their respective agencies or a utility provider.
- 2.4 Notwithstanding Section 2.2 d), a **Fence** or any attachment to a **Fence** may be used as a conductor of an electrical current on properties which necessarily require a **Fence** as part of active agricultural activity.
- 2.5 No **Person** shall **Erect** a **Fence** over a drainage easement or watercourse without constructing a **Water Gate** sufficient to ensure adequate drainage.
- 2.6 All **Water Gates** on **Fences** shall at all times be kept free from obstruction by the **Owner** of such **Fence**.
- 2.7 Notwithstanding any other provision of this by-law, no **Person** shall **Erect** a **Fence**, **Division Fence** or **Privacy Screen** so as to obstruct access to any hydro or water meter or meter reading device by any employee, **Officer** or agent, of Hydro One or the **Town**.
- 2.8 No **Person** shall **Erect** a **Fence**, **Division Fence** or **Privacy Screen** that is located within 45 centimetres (18 inches) of a sidewalk.
- 2.9 No **Person** shall **Erect** a **Fence**, **Privacy Screen** or **Division Fence** that is greater than 200 millimetres (8 inches) wide.
- 2.10 In case of any lot, no **Person** shall **Erect** a **Fence** or cause a **Fence** to be **Erected** within a **Sight Triangle** formed by measuring five metres (5m) along the **Lot Lines** from the intersection of any two highways or at the intersection of two parts of the same highway meeting at an angle or not more than one hundred and thirty-five (135) degrees.
- 2.11 No **Person** shall cause a **Fence** or cause a **Fence** to be erected within a **Driveway Sight Triangle**.
- 2.12 The **Owner** of any **Fence** or **Division Fence** or the agent or employee of such **Owner** is permitted to enter upon the land adjoining the **Fence** after having given at least 24 hours written notice of intention to enter to the adjoining property **Owner** or tenant for the purpose of making necessary and appropriate repairs, alterations or improvements to such **Fence** or **Division Fence** but only to the extent necessary to effect such repairs, alterations or improvements and provide that the adjoining land shall be left in the same condition it was prior to such entry.

2.13 No **Person** shall **Erect** or permit to be **Erected** a **Fence or Division Fence** either permanently or temporarily on any street except for emergency protection measures, or with the approval of **Council**.

2.14 Maintenance

All **Fences, Privacy Screens or Division Fences** shall be:

- (a) **Maintained** in good repair;
- (b) **Maintained** in a structurally sound condition;
- (c) **Maintained** so that it is not in an unsafe or unsightly condition;
- (d) protected from deterioration by the timely application of paint or other suitable protective material;
- (e) for the purpose of this subsection, **Maintenance** of a **Fence, Privacy Screen or Division Fence** with a surface that has been previously painted, stained, varnished or which has been treated with other similar protective finishes shall be **Maintained** so that such finish does not visibly deteriorate.

2.15 Graffiti

- (a) No **Person** shall place graffiti or cause or permit to be placed graffiti on any **Fence, Privacy Screen or Division Fence**.
- (b) Every **Owner** shall at all times maintain their **Fence, Privacy Screen or Division Fence** free of graffiti.

2.16 Fence on Boundary of Different Zones

Where a **Lot Line** is indicated as following a **Zone** boundary, the **Fence** that may be **Erected** shall be constructed to the specifications of the **Zone** with the maximum **Height** restriction. Where the **Zone** boundary is located on a **Street Line** this subsection shall not apply.

2.17 Setbacks

All **Setbacks** for **Fences** shall be measured on the **Owner's** lot from the **Lot Lines** on which the **Fence** is **Erected** or proposed to be **Erected** and may meet an established building line.



2.18 Town and Park Property

No **Person** shall **Erect** a **Fence** which contains a gate or opening structure that abuts **Town** property.

2.19 Lake Simcoe Region Conservation Authority

All **Fences Erected** on lands over which Lake Simcoe Region Conservation Authority has jurisdiction require approval from the Conservation Authority prior to installation of the **Fence**.

**3.0 ADMINISTRATION AND EXEMPTIONS**

3.1 This by-law shall be administered by the **Manager**.

3.2 The provisions of this by-law shall not apply to **Fences Erected** by the Town of East Gwillimbury, The Regional Municipality of York, The Government of Ontario, The Government of Canada, Hydro One, Ontario Power Authority, gas or power generation companies and Lake Simcoe Region Conservation Authority.

3.3 A requirement of this by-law does not apply to a **Fence** that has been exempted from that requirement by the **Appeal Committee**.

3.4 Where a property is subject to a site plan agreement under Section 41 of the Planning Act, R.S.O., 1990, every **Fence** on the property shall comply with the site plan agreement.

3.5 Where a **Fence** has been **Erected** pursuant to a subdivision agreement under Section 51 of the Planning Act, R.S.O., 1990, every **Fence** shall comply with the subdivision agreement.

3.6 Where a **Fence, Privacy Screen or Division Fence** as provided below shall be exempt from all sections of this by-law with the exemption of Part 2.14:

- a) erected in accordance with an approved site plan agreement or subdivision agreement;
- b) erected by federal, provincial or municipal government and or, by a utility provider;
- c) constructed for and/or, as part of a kennel, provided the kennel is licenced by the **Town**;

- d) erected and used to enclose or delineate an area required for and lawfully in accordance with the **Town** By-laws used as a recreational facility such as a tennis court and/or basketball court, provided the fence is of chain link construction.

3.7 Within any six month period the requirements of this by-law do not apply to a **Fence** that was **Erected** lawfully prior to the day on which this by-law came into force unless fifty percent (50%) or more of the **Fence** is to be replaced or repaired.

#### 4.0 RESTRICTIONS IN ALL RESIDENTIAL ZONES

4.1 No **Person** shall **Erect** or permit to be **Erected** a **Fence** on any lot in a residential **Zone** except in accordance with the following provisions:

- (a) no **Person** or **Owner** shall use or allow the use of barbed wire or other barbed material or any material of a nature which could be injurious to the public in the construction, **Maintenance**, or used as a **Fence**;
- (b) no **Person** or **Owner** shall **Erect** a **Fence** from chicken wire, or degraded used material;
- (c) notwithstanding any other provision in this by-law a 1.2 metre (4 feet) high chain link **Fence** or a 0.9 metre (3 feet) high **Fence** may be **Erected** along any **Lot Line** in a residential **Zone**, except within a **Sight Triangle** or **Driveway Sight Triangle**;
- (d) the provisions of section 4 do not apply to a **Fence** erected to enclose a privately owned outdoor tennis court on a residential property, provided the **Fence** is of chain link construction and located no closer to a property line than 2 metres (6.6 feet).

#### 4.2 Rear Lots

No **Fence Erected** in a rear yard shall exceed 2 metres (6.6 feet) in **Height**.

#### 4.3 Interior Lots

No **Person** shall **Erect** or permit to be **Erected** a **Fence** on an **Interior Lot** except in accordance with the following regulations:

- (a) a **Fence** within the front yard shall not exceed a **Height** of 0.9 metres (3 feet), except a chain link **Fence** which shall not exceed a **Height** of 1.2 metres (4 feet); and

- (b) a **Fence** within any rear yard or interior side yard shall not exceed a **Height** of 2 metres (6.6 feet).

#### 4.4 Through Lots

No **Person** shall **Erect** or permit to be **Erected**, a **Fence** on a through lot except in accordance with the following regulations:

- (a) a **Fence** within the front yard or shall not exceed a **Height** of 0.9 metres (3 feet), except a chain link **Fence** which shall not exceed a **Height** of 1.2 metres (4 feet); and
- (b) a **Fence** within any rear yard or interior side yard shall not exceed a **Height** of 2 metres (6.6 feet).

#### 4.5 Corner Lots

No **Person** shall **Erect** or permit to be **Erected** a **Fence** on a **Corner Lot** except in accordance with the following regulations:

- (a) a **Fence** not exceeding 0.9 metres (3 feet) in **Height** may be **Erected** within any part of a front yard, except a chain link **Fence** which shall not exceed a **Height** of 1.2 metres (4 feet); and
- (b) a **Fence** having a maximum **Height** of 2 metres (6.6 feet) may be **Erected** in an exterior side yard and rear yard.

#### 4.6 Privacy Screens in Residential Zones

No **Person** shall **Erect** or permit to be **Erected** a **Privacy Screen** except in accordance with the following regulations:

- (a) located within interior side, exterior side or rear yards only;
- (b) **Privacy Screens** located in a front yard may be **Erected** between adjacent independent entrances of semi-detached, townhomes and link dwellings providing that;
  - i) The **Privacy Screen** shall not encroach more than 1.2 metres (4 feet) from the wall containing the adjacent independent entrances; and
  - ii) Shall not exceed 1.8 metres (6 feet) in **Height**; and
  - iii) Shall not exceed 1.8 metres (6 feet) in length.

- (c) Located not less than 1 metre (3.28 feet) from a **Side Lot Line**, provided, however, that where the **Privacy Screen** is located so as to provide a visual barrier between dwelling units divided by a common wall, such screen may be placed closer along the common property boundary;
- (d) Located more than 4.5 metres (14.9 feet) from the street line;
- (e) Located more than 1 metre (3.37 feet) from the rear lot line;
- (f) Not more than 9.1 metres (30 feet) and no individual length longer than 4.8 metres (16 feet);
- (g) No more than 3 metres (10 feet) in **Height** if constructed at **Grade** level and no more than 2 metres (6.6 feet) in **Height** if constructed on a **Deck**.

#### 4.7 Gates, Archways and decorative caps

- (a) Gates may exceed fence height restrictions by a maximum of 30 centimetres (1 foot);
- (b) Archways forming part of an entrance may exceed fence height restrictions to a maximum of 2.4 metres (8 feet);
- (c) Decorative caps on structural posts may exceed fence height restrictions to a maximum of 15 centimetres (6 inches).

### 5.0 RESTRICTIONS IN NON-RESIDENTIAL ZONES

5.1 No **Person** shall **Erect** or permit to be **Erected**, a **Fence** on any lot in a non-residential **Zone**, except in accordance with the following provisions:

- (a) no **Fence** shall be **Erected** having a **Height** in excess of 3.05 metres (10 feet) from the **Rear Lot Line** to the established building line of the main building **Erected** on the lot.

5.2 In non-residential **Zones** that permit outside storage pursuant to the **Zoning By-law**, the area used for **Outdoor Storage** shall be screened so that the goods, materials, equipment or machinery are not visible from any street or abutting lots. No **Person** shall **Erect** or permit to be **Erected** a **Fence** on any lot **Zoned** industrial storage except in accordance with the following provisions:

- (a) Where land is used for the purpose of a **Scrap Yard** or **Salvage Yard**, the use shall be surrounded on all sides by a **Fence** that is in conformity with all of the following provisions:
  - (i) a **Fence** shall be **Erected** having a **Height** of 2.4 metres (8 feet); and
  - (ii) this **Fence** shall be constructed of permanent opaque materials that provide a visual barrier; and
  - (iii) this **Fence** shall be erected not closer than 7.5 metres (25 feet) from any front lot line.

## 6.0 FENCES FOR LIVESTOCK

6.1 Every **Owner** on whose property **Livestock** are being kept shall prevent the **Livestock** from leaving the property at any time by **Erecting** a perimeter **Fence** or other interior enclosure, and, further such **Owner** shall keep the said perimeter **Fence** or other interior enclosure in good repair.

## 7.0 POWERS OF ENTRY

7.1 The **Town** 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) the provisions of this by-law;
- (b) an Order issued under this by-law; or
- (c) an Order made under Section 431 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended.

- 7.2 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; and
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts; and
  - (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 tests, samples or photographs necessary for the purposes of the inspection.
- 7.3 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.
- 7.4 The **Town's** power of entry may be exercised by an employee, **Officer**, or agent of the **Town** or by a member of the York Regional Police force, as well as by any **Person** under his or her direction.

## **8.0 ORDERS AND REMEDIAL ACTION**

- 8.1 If a **Person** is **Erecting** a **Fence** in contravention of any of the provisions of this by-law, the **Town** may issue an Order to the **Person** and to the **Owner** of the lot on which the **Fence** is being **Erected**, to discontinue the contravening activity. 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.
- 8.2 If a **Person** has contravened a provision of this by-law, the **Town** may issue an 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** or **Privacy**

**Screen**, at the expense of the **Person** and the **Owner**. The Order may be served in accordance with the service provisions contained in this by-law.

- 8.3 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 a contravention, the **Town** may enter upon the lot between the hours of 9:00 a.m. and 5:00 p.m., Monday to Friday, to do all work necessary to correct the contravention, including the removal of all or part of the **Fence, Division Fence or Privacy Screen** and the **Town** may recover the cost of doing the matter or thing from the **Owner** 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.
- 8.4 An Order issued under this by-law may be served personally on the **Owner**, or to an email address that the **Person** has provided to the **Town** or posted at the address where the **Fence or Privacy Screen** was **Erected** or altered, or sent by registered mail to the last known address of the **Owner**, in which case it shall be deemed to have been given on the fifth calendar day after it is mailed.
- 8.5 If there is evidence that the occupant of the land is not the registered property **Owner**, the Order shall be served on both the registered property **Owner** and the occupant of the land.

## 9.0 PENALTY PROVISIONS

- 9.1 Every **Person** who contravenes a provision of this by-law, including an Order issued under this by-law, is guilty of an offence and on conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c P.33.
- 9.2 If a **Fence** has been **Erected** in contravention of any provision of this bylaw, and the contravention has not been corrected, the contravention shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
- 9.3 If an Order has been issued under this by-law, and the Order has not been complied with, the contravention of the Order shall be deemed to be a continuing offence for each day or part of a day that the Order is not complied with.
- 9.4 Every **Person** who is guilty of an offence under this By-law shall be subject to the following penalties:
- (a) upon a first conviction, shall be liable to a fine of not less than \$350.00 and not more than \$50,000.00;

- (b) upon a second or subsequent conviction for the same offence, to a fine of not less than \$500.00 and not more than \$100,000.00;
- (c) upon conviction for a continuing offence, to a fine of not less than \$500.00 and no more than \$10,000.00 for each day or part of a day that the offence continues, the total of which is not limited to \$100,000.00; and
- (d) upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$350.00 and not more than \$10,000.00, the total of which is not limited to \$100,000.00.

9.5 For the purposes of this by-law, “multiple offences” means an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this by-law.

9.6 For the purposes of this by-law, an offence is a “second or subsequent offence” if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

9.7 Upon conviction any penalty imposed under this by-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

## 10.0 OBSTRUCTION

10.1 In accordance with the provisions of the Municipal Act S.O. 2001, c. 25, as amended, Section 426(1), no **Person** shall hinder, interfere with or otherwise obstruct, either directly or indirectly, an **Officer**, employee of the Town of East Gwillimbury and/or agent in the lawful exercise or power or duty under this by-law.

10.2 Any **Person** who has been alleged to have contravened any of the provisions of a by-law passed under the Municipal Act, 2001, as amended shall identify themselves to the **Officer** upon request. Failure to do so shall be deemed to have obstructed or hindered the **Officer** in the execution of the **Officer’s** duties.

## 11.0 ADMINISTRATIVE PENALTIES

11.1 Instead of laying a charge under the Provincial Offences Act, as amended, for breach of any provision of this By-law, an **Officer** may issue an administrative penalty to the person who has contravened this by-law.

11.2 The **Officer** has the discretion to either proceed by way of an administrative penalty or a charge laid under the Provincial Offences Act. If an administrative



penalty is issued to a **Person** for the breach, no charge shall be laid against that same **Person** for the same breach.

- 11.3 The amount of the administrative penalty for a breach of a provision of this By-law, issued under this By-law, is fixed as set out in an Administrative Penalty By-law as amended, or any successor by-law.
- 11.4 A **Person** who is issued an administrative penalty shall be subject to the procedures as provided for in an Administrative Penalty By-law, as amended, or any successor by-law.
- 11.5 An administrative penalty imposed on a **Person** pursuant to this by-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the **Person** to the Municipality and may be added to the municipal tax roll and collected in the same manner as municipal taxes.

## 12.0 VARIANCE

- 12.1 Where a proposed or existing **Fence** or **Privacy Fence** is not in compliance with this by-law, the **Owner** of the lot on which the Fence or Privacy Fence is or is proposed to be constructed, or an authorized agent of the **Owner**, may request a variance from any of the applicable provisions of this by-law.
- 12.2 An application for a variance shall be made on the form prescribed by the **Town** and shall be accompanied by the non-refundable variance application fee set out in the Fees and Charges by-law.
- 12.3 An application for a variance from the provision of the by-law shall be made in writing to the secretary of the **Appeal Committee** with the following information:
- (a) the application fee as approved by the Fees and Charges by-law; and
  - (b) the name address and telephone number of the applicant; and
  - (c) reference to the section of the by-law from which the exemption is being sought; and
  - (d) a statement whether the proposed **Fence, Division Fence or Privacy Fence** will be temporary or permanent; and
  - (e) reasons why the exemption is being sought; and
  - (f) a property survey; and
  - (g) site plan, and
  - (h) specifications pertaining to the description of the **Fence** construction and installation of the **Fence**.

- 12.4 The Secretary of the **Appeal Committee** shall give notice, or direct that notice be given, at least seven (7) days prior to the hearing by personal service delivery or mail to every Owner of land shown on the last revised assessment roll abutting property owners of the subject property, and to anyone who submitted to the Secretary to the Committee in writing a request for a variance.
- 12.5 Upon reviewing an application, the **Appeal Committee** shall consider:
- (a) whether the request is minor in nature; and
  - (b) whether it is in accordance with the general intent and purpose of the by-law; and
  - (c) whether the proposed variance is desirable and in keeping with the **Fences** in the area; and
  - (d) would the approval of the variance result in any impacts to the health, safety or welfare of the public.
- 12.6 The hearing of every application shall be held in public, and the **Appeal Committee** shall hear the applicant and every other person who desires to be heard in favour of or against the application, and the **Appeal Committee** may adjourn the hearing or reserve its decision.
- 12.7 No decision of the **Appeal Committee** on an application is valid unless it is concurred by the majority of the members of the **Appeal Committee** that heard the application, and the decision of the **Appeal Committee**, whether granting or refusing an application, shall be in writing and shall set out the reasons for the decision, and shall be signed by the members who concur in the decision.
- 12.8 Any authority or permission granted by the **Appeal Committee** may be for such time and subject to such terms and conditions as the **Appeal Committee** considers advisable and as are set out in the decision.
- 12.9 The **Appeal Committee**, upon hearing an application for a variance shall render a decision.
- 12.10 The **Appeal Committee** shall inform the applicant, as well as any abutting neighbours that submitted objections, of its decision by way of written notice setting out the grounds for the decision with reasonable particulars.
- 12.11 A decision of the **Appeal Committee** is final and binding.

**13.0 SEVERABILITY**

- 13.1 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid such section or part of a section shall not be construed as having persuaded or influenced **Council** to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.
- 13.2. Where the provisions of this by-law conflict with the provisions of any other By-law or Act, the more restrictive provisions shall apply.

**14.0 ENFORCEMENT AND ADMINISTRATION**

- 14.1 This by-law shall be enforced and administered by the Town of East Gwillimbury.

**15.0 FEES**

- 15.1 All fees are subject to the Town of East Gwillimbury User Fees and Charges By-law.

**16.0 SHORT TITLE**

- 16.1 This by-law may be cited as the "Fence By-Law."

**17.0 REPEALING SECTION**

- 17.1 By-law 2007-75 is hereby repealed.

ENACTED AND PASSED this 5<sup>th</sup> day of November, 2019.

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Virginia Hackson, Mayor

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Fernando Lamanna, Municipal Clerk