

The Corporation of the Town of Aurora

By-law Number XXXX-20

Being a By-law to regulate and prescribe the standards for fences and pool enclosures.

Whereas Subsection 11(3) 7 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended (the "Municipal Act"), provides that a local municipality may pass by-laws respecting structures, including fences and signs;

And whereas section subsection 98(1) and (2) of the *Municipal Act* provides that a by-law may be passed by a municipality stating that the *Line Fences Act*, R.S.O. 1990, c. L.17 does not apply to all or part of the municipality, subject to the continuing applicability of section 20 of the *Line Fences Act*;

And whereas Section 26 of the *Line Fences Act* states that it does not apply, except for section 20, to land in an area that is subject to a by-law for apportioning the costs of line fences passed under the *Municipal Act*;

And whereas Subsection 8(1) of the *Municipal Act* provides that powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

And whereas Subsection 391(1) of the *Municipal Act* provides that a municipality may pass by-laws imposing fees or charges on any persons for the use of its property including property under its control;

And whereas Section 446 of the *Municipal Act* 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 but has failed to do and to recover the costs of doing so by adding the costs to the tax roll and collecting them in the same manner as property taxes;

Now therefore the Council of The Corporation of the Town of Aurora hereby enacts as follows:

1. Definitions

1.1 In this by-law, the following words have the following meanings:

- (a) **"Building Code Act"** means the *Building Code Act, 1992*, S.O. 1992, c. 23, as it may be amended or replaced from time to time;
- (a) **"CBO"** means the Chief Building Official of the Town as appointed pursuant to the Building Code Act;
- (b) **"Clerk"** means the Clerk of the Town as appointed pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25;
- (c) **"Director"** means the department head of the Corporate Services Department of the Town, or his/her designate or successor;
- (d) **"Driveway"** means any space on private property used, or intended to be used, by vehicles to park or to access parking;
- (e) **"Fence"** means a barrier, including one for noise attenuation, or any structure, except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining land, and includes any hedge or shrub that has the same effect;
- (f) **"Front Yard"** means the space, extended to the full width of the lot, including any side Lot Lines, between the main front wall of the building and the Lot Line abutting a Public Highway, but on a corner lot means the space, extended to the full width of the lot, including any side Lot Line, between the shorter Lot Line abutting a Public Highway, other than a public lane, and the nearest wall of the main building on the lot;
- (g) **"Guard"** means as defined under Ontario Regulation 332/12, the Building Code of Ontario, or amended or successor thereof;
- (h) **"Height"** means the vertical distance above grade of ground level or, if another reference point is specified, vertical distance above the other reference point;
- (i) **"Lot Line"** means the boundary line of a lot that marks the division of properties;

- (j) **"Multiple Residential Property"** means land that is not a Single Residential Property and that is primarily used for residential purposes, and also includes land used for hotels and vacant land that abuts a Multiple Residential Property, as prior defined;
- (k) **"Municipal Act"** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or successor thereto;
- (l) **"Non-Residential Property"** means land that is used for purposes other than for residential use, and includes land that is used for both residential and other purposes, and also includes vacant land abutting Non-Residential Property, as prior defined;
- (m) **"Officer"** means a person appointed by the Town as Municipal Law Enforcement Officer;
- (n) **"Open-Fence Construction"** means a Fence construction that provides motorists and pedestrians with an unobstructed view of people, vehicles and their movements through the entire length of the Fence;
- (o) **"Outside"** when used in reference to a Swimming Pool Enclosure, means the side external to the enclosed area in which the pool is located;
- (p) **"Owner"** means all registered owners of a property and also includes:
 - (i) the owner in trust,
 - (ii) a mortgagee in possession,
 - (iii) any Person that is managing the property or is responsible for managing the property,
 - (iv) any Person who collects rent on the property or is responsible for collecting rent on the property, and
 - (v) any lessee or occupant of the property;
- (q) **"Parking Lot"** means any space on private property used, or intended to be used, by vehicles to park or to access parking that is not on a Single Residential Property;

- (r) **"Person"** includes an individual, sole proprietorship, partnership, limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, administrator or other legal representative;
- (s) **"Public Highway"** means any highway as defined under the Municipal Act and includes any street, road, sidewalk, boulevard, lane or any other portion of a highway;
- (t) **"School"** means any land or premises used for, or intended to be used for, a school site as defined under the *Education Act*, R.S.O. 1990, c. E.2;
- (u) **"Single Residential Property"** means and includes:
 - (i) a property that is used for not more than two dwelling units in a detached or semi-detached building, and
 - (ii) vacant land abutting Single Residential Property as defined in subparagraph (i) above;
- (v) **"Snow Fence"** means any Fence used to force drifting snow to accumulate in a predictable place, and which is usually constructed of plastic mesh, lightweight woodstrip, or wire fencing;
- (w) **"Swimming Pool"** means any outdoor structure or thing located on privately owned property that is capable of being used for swimming, wading or bathing and in which the water depth at any point can exceed 600 millimetres;
- (x) **"Swimming Pool Enclosure"** means a Fence, wall or other structure, including any permitted door, gate or other opening, which surrounds and restricts access to an outdoor Swimming Pool;
- (y) **"Swimming Pool Enclosure Permit"** means a written permit issued by the Town pursuant to this by-law authorizing the erection, construction, placing or maintenance of Swimming Pool Enclosure;
- (z) **"Temporary Enclosure"** means a Fence, wall or other structure, including any permitted door, gate or other opening, which temporarily surrounds and restricts access to an outdoor Swimming Pool or the site on which a Swimming Pool is being constructed;
- (aa) **"Town"** means The Corporation of The Town of Aurora and/or the geographical limits of the Town of Aurora, depending on the context of the provision in which the term appears;

(bb) **“Tribunal”** means the Aurora Appeal Tribunal as established by Town Council.

2. **Interpretation and Application of this By-law**

- 2.1 This by-law shall be known and may be cited as the “Fence By-Law”.
- 2.2 The provisions of this by-law shall apply to all lands and premises within the Town of Aurora.
- 2.3 Notwithstanding the above, this by-law does not apply to activities or matters undertaken by the Town or the Federal Government of Canada.
- 2.4 Unless otherwise specified, references in this by-law to parts, sections, subsections, clauses and schedules are references to parts, sections, subsections, clauses, and schedules in this by-law.
- 2.5 The part and section headings contained throughout this document are for reference purposes only and do not form a part of this by-law. This by-law is to be interpreted without reference to such headings.
- 2.6 References in this by-law to any statute or statutory provisions include references to that statute or statutory provision as it may from time to time be amended, extended, or re-enacted.
- 2.7 This by-law shall be read with all changes in gender or number as the context requires.
- 2.8 References in this by-law to items in the plural include the singular, and references to the singular include the plural, as applicable.
- 2.9 The words “include”, “includes”, “including” are not to be read or interpreted as limiting the words, phrases, or descriptions that precede it.
- 2.10 If a court of competent jurisdiction declares any section, or any part of any section of this by-law to be invalid or to be of no force in effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.

2.11 This by-law and the provisions contained within are intended to be complementary to other by-laws passed by Council and in the event that any other applicable law requires a higher standard than the provisions contained in this by-law, the higher standard shall apply.

3. **Planning Act Agreements**

3.1 Where a property is subject to a site plan agreement under section 41 of the *Planning Act*, R.S.O. 1990, c. P.13 any Fences on such property shall comply with the applicable site plan agreement. In case of any conflict or inconsistency as between such a site plan and this by-law, the provision of the site plan agreement shall prevail.

3.2 Where a property is subject to a subdivision agreement under section 51 of the *Planning Act* any Fences on such property shall comply with the applicable subdivision agreement. In case of any conflict or inconsistency as between such a subdivision agreement and this by-law, the provision of the subdivision agreement shall prevail.

4. **Prohibitions and Restrictions on Fences**

4.1 No Person shall erect, own or maintain, or cause or permit the erection or maintenance of, any Fence that does not comply with this by-law and with any other applicable law.

4.2 No Person shall erect, own or maintain, or cause or permit the erection or maintenance of, any Fence:

(a) that uses or is constructed of, wholly or partially, any barbed wire, chicken wire, or other barbed or sharp material;

(b) that uses or is constructed of, wholly or partially, any sheet metal or corrugated metal panels;

(c) that, wholly or partially, conducts electricity or contains a device that conducts electricity, unless the Fence is located on agricultural land that is in actual use for raising livestock and such Fence or electrical device:

i) carries electricity of not more than 12 volts;

- ii) is designed and installed only for the purpose of containing livestock; and
 - iii) has signs installed at not more than twelve (12) metre intervals along the Fence warning that the Fence carries electricity;
- (d) That uses or wholly or partially consists of materials not usually intended for use in permanent fencing, unless specifically permitted by this by-law or another by-law.
- 4.3 Any Fence that is temporary shall not be erected or maintained, or be caused to be erected or maintained, for a period that is longer than 180 consecutive days or a total of 180 calendar days in any year, unless otherwise approved by the Director or associated to an active and valid building permit pursuant to the Building Code Act for the property on which such Fence is erected.
- 4.4 Notwithstanding Paragraph (d) of Subsection 4.2, a Snow Fence may be used in the time period between November 15 and April 15, provided that it complies with all corresponding standards in this and other applicable bylaws.
- 4.5 Unless otherwise provided in this by-law, the types of Fences described in the table in Schedule "A" shall comply with the Height restrictions as outlined in Schedule "A", subject to the following:
- (a) when measured at any point along its length from the average grade level measured perpendicular to and one meter away on either side of the Fence, the described Fences shall not exceed the associated Height restrictions outlined in Schedule "A";
 - (b) where more than one description in the following table applies to a Fence, each part that corresponds to a single description shall be deemed to be a separate Fence for the purpose of determining the maximum Height for that part;
 - (c) despite the Height restrictions set out herein, a Fence at any School may be up to a maximum of 1.5 meters in Height if such Fence is adjacent to a Public Highway or right-of-way.

4.6 Unless otherwise provided in this by-law, all Fences shall comply with the following requirements with respect to Driveways and Parking Lots:

- (a) any Fence located within 2.4 meters of any Driveway shall be an open mesh chain-link Fence, or of an equivalent Open-Fence Construction, for at least 2.4 meters from the Lot Line at which the Driveway begins so as not to obstruct the view of the boulevard or highway;
- (b) on or around a Parking Lot, any Fence shall be an open mesh chain-link Fence, or of an equivalent Open-Fence Construction, anywhere it may otherwise restrict the sight lines of vehicular or pedestrian traffic in the Parking Lot; and
- (c) no vegetation shall be permitted to grow and no object shall be placed in such a way as to obstruct the view through a Fence to which the aforementioned paragraphs (a) or (b) apply.

4.7 Any part of a Fence erected or located within 60 centimeters of a building on an adjacent property shall be constructed with removable panels or have hinged panels, or otherwise constructed in such a way to provide ease of access to such adjacent building. Notwithstanding the above, the requirement to provide removable panels or access to a building only applies with respect to buildings that fit into the definition of a building under the Building Code Act and are legally erected, pursuant to the Building Code Act, prior to the Fence being put in place.

4.8 Where a Fence is used as a Guard, it shall be installed and maintained in compliance with the provisions of the Building Code Act and the associated regulations. Further, if a Guard forms part of a Swimming Pool Enclosure, it shall also comply with the requirements of Section 5 of this by-law. In the case that more than one by-law requirement or more than one by-law apply with respect to Guard requirements, the more restrictive provisions shall apply.

5. **Swimming Pool Enclosure Permits**

5.1 No Person shall excavate for or erect, or cause to be excavated for or erected, a privately-owned outdoor Swimming Pool without first obtaining a Swimming Pool Enclosure Permit for the premises on which the Swimming Pool is to be located.

- 5.2 An application for a Swimming Pool Enclosure Permit shall be submitted to the CBO on a form as prescribed by the CBO.
- 5.3 The form, content, terms, conditions and requirements of the application for a Swimming Pool Enclosure Permit shall be as prescribed by the CBO from time to time and the CBO may, without limiting the CBO's authority to prescribe the application and its form, content, terms, conditions and requirements, require as part of an application:
- (a) a detailed accurate site plan that illustrates the location of and the setback measurements of the fencing, easements, pool and all buildings;
 - (b) the applicant to agree to any terms and conditions as prescribed by the CBO;
 - (c) any affidavits, drawings, plans, surveys, photographs and other documents the CBO deems to be necessary in order to assess the proposed application; and
 - (d) any information deemed necessary by the CBO to be able to evaluate the application with respect to the proposed activities and the associated timeframes.
- 5.4 In addition to the above, any premises subject to an application for a Swimming Pool Enclosure Permit located within the Lake Simcoe Region Conservation Area (LSRCA) or the Toronto Region Conservation Authority (TRCA) must receive approval in writing from the LSRCA or the TRCA, as applicable, prior to submitting the Swimming Pool Enclosure Permit application to the CBO.
- 5.5 Upon receipt of an application for a Swimming Pool Enclosure Permit and receipt of the applicable fees, as established in the Town's Fees and Charges By-law, the CBO shall make investigations as necessary to assess the application and may, in accordance with the criteria and requirements set out in this by-law:
- (a) issue a Swimming Pool Enclosure Permit after receipt of a complete application for an enclosure that meets all the requirements of this by-law;
 - (b) in the case of an approved application for a Swimming Pool Enclosure Permit, impose such terms and conditions on the Swimming Pool Enclosure Permit as deemed appropriate by the CBO:

- (i) for the protection of any public infrastructure and property abutting the area subject to the Swimming Pool Enclosure Permit,
 - (ii) for the protection of health, safety and well-being of persons and the environment,
 - (iii) for the purposes of administration of the Swimming Pool Enclosure Permit and the operations of the Town,
 - (iv) for the purposes of maintaining proper standards and workmanship,
 - (v) for the purposes of protecting the Town interests with respect to any risks associated with the work or activities pursuant to the Swimming Pool Enclosure Permit and the use of a Swimming Pool, and
 - (vi) to satisfy any requirements of this by-law or any other applicable legislation.
- (c) refuse to issue a Swimming Pool Enclosure Permit if:
- (i) the application is not completed, all the information as required under this by-law is not provided or the application does not meet all the requirements of this by-law, or
 - (ii) the required fees are not provided.

5.6 In addition to the above, the CBO may, on his or her own initiative, acting reasonably:

- (a) alter or revoke the terms and conditions of a Swimming Pool Enclosure Permit after it has been issued; or
- (b) impose new terms and conditions in a Swimming Pool Enclosure Permit.

5.7 A Swimming Pool Enclosure Permit holder shall immediately inform the CBO of any change to:

- (a) the information contained in an application for a Swimming Pool Enclosure Permit;
- (b) the information contained in a Swimming Pool Enclosure Permit that has been issued;
- (c) the characteristics of the activity or work for which the Swimming Pool Enclosure Permit has been issued; or
- (d) the cancellation of any related activity or work.

In the case of any such change, the CBO may require revised or additional information, additional fees, or a new application with respect to the change.

5.8 A Swimming Pool Enclosure Permit shall be time limited and shall expire pursuant to the terms and conditions as set out in the Swimming Pool Enclosure Permit, upon completion of the work or activity governed by the Swimming Pool Enclosure Permit or revocation of such Swimming Pool Enclosure Permit, whichever occurs first.

5.9 Prior to the expiry of a Swimming Pool Enclosure Permit, a Swimming Pool Enclosure Permit holder may apply for an extension to the Swimming Pool Enclosure Permit, and the CBO may approve of such extension.

5.10 The CBO may revoke a Swimming Pool Enclosure Permit if the Swimming Pool Enclosure Permit holder, or parties conducting the work or activities pursuant to the Swimming Pool Enclosure Permit:

- (a) fail to comply with the terms and conditions of such a Swimming Pool Enclosure Permit or fail to comply with this by-law;
- (b) fail to notify the CBO immediately of any of the changes referred to in subsection 5.7 of this by-law;
- (c) fail, within ninety (90) days after the issuance of the Swimming Pool Enclosure Permit, to commence the work or activity, beyond a preliminary or nominal level, for which the Swimming Pool Enclosure Permit was obtained;

- (d) substantially discontinue the work or activity for a period of more than thirty (30) days;
- (e) provide false or inaccurate information in the application for the Swimming Pool Enclosure Permit; or
- (f) any Person doing work on behalf of the Swimming Pool Enclosure Permit holder has failed to comply with any applicable law, statutes, regulations, orders, standards, codes, by-laws or rules.

5.11 In addition to the above, the CBO may immediately suspend or revoke a Swimming Pool Enclosure Permit issued under this by-law, in writing, where the CBO is satisfied that a suspension or revocation is necessary in an emergency situation of immediate threat or danger to public infrastructure, any abutting property or to any Person.

5.12 The CBO may give notice of the suspension or revocation of a Swimming Pool Enclosure Permit by contacting a Swimming Pool Enclosure Permit holder in writing, by telephone or by email in accordance with the contact information provided on the Swimming Pool Enclosure Permit application.

5.13 Any decision of the CBO pursuant to this Section shall be final without a right to appeal to the Council.

6. Swimming Pool Enclosures and Temporary Enclosures

6.1 Every Owner of a property on which a privately-owned outdoor Swimming Pool is located shall erect and maintain, or cause to be erected and maintained, a Swimming Pool Enclosure completely around the privately-owned outdoor Swimming Pool, which enclosure:

- (a) shall extend from the ground to a Height, measured on the Outside of the enclosure, of not less than 1.5 meters along its entirety, including gates therein;
- (b) may incorporate all or portion of the wall of a building, but no entrances to the pool area shall be permitted through such wall unless the entrance is set back a minimum distance of 1.8 meters from the waters edge of the pool;

- (c) may incorporate one or more gates of equivalent material and construction as the Swimming Pool Enclosure and every such gate shall not be less than 1.5 meters in Height along its entirety, be supported on hinges that are designed and capable of supporting the weight of the gate, be self closing and equipped with self latching devices placed on the inside of the gate at or near the top;
- (d) the enclosure and any gates shall be closed and locked at all times when a responsible person is not present and supervising the Swimming Pool or pond;
- (e) shall not include self-latching devices with any quick release device that permits the gate to be opened from Outside of the enclosure;
- (f) shall be located not less than 1.2 meters from the waters edge and in the case of an above ground systems pool with a deck and a Fence forming part of the system, the waters edge may be as close as 0.5 meter to the Fence portion of the systems;
- (g) shall not include the main entrance to the building within the enclosure;
- (h) shall be constructed in such a manner that a space of not more than 10 centimetres shall be permitted at any point between the bottom of the Fence and the ground.

6.2 All parts of a Swimming Pool Enclosure, including the gate, shall be constructed in compliance with the following standards:

- (a) any wood Fence that is used in or as part of a Swimming Pool Enclosure shall be constructed in a good, workmanlike manner as follows:
 - (i) vertical boards shall be:
 1. made up of at least 19 millimetre by 89 millimetre lumber;
 2. spaced at least 38 millimetres apart where horizontal rails are spaced less than 1.2 metres apart;
 3. spaced at least 100 millimetres apart where horizontal rails are spaced 1.2 metres apart or more;

4. attached to horizontal rails that are:

[A] made up of at least 38 millimetre by 89 millimetre lumber; and

[B] supported on posts that are at least 89 millimetres by 89 millimetres, spaced not more than 2.4 metres apart, securely fastened to the ground and structurally sound.

(ii) horizontal boards shall be:

1. made up of at least 19 millimetre by 89 millimetre lumber;

2. spaced not more than 20 millimetres apart;

3. offset or protruding not more than 15 millimetres from the board immediately above or below; and

4. not more than 2.4 metres in length.

(b) any metal picket Fence that is used in or as part of a Swimming Pool Enclosure shall be constructed in a good, workmanlike manner as follows:

(i) vertical pickets shall be spaced not more than 38 millimetres apart where horizontal rails are spaced less than 1.2 metres apart and not more than 100 millimetres apart where horizontal rails are spaced at least 1.2 metres apart; and

(ii) horizontal rails shall be supported on posts that are spaced not more than 2.4 metres apart, securely fastened to the ground and structurally sound.

(c) Any glass panel Fence that is used in or as part of a Swimming Pool Enclosure shall be constructed in a good workmanlike manner as follows:

(i) glass panels shall be located so there is no opening of more than 38 millimetres between the panel and the post where horizontal elements are spaced less than 1.2 metres apart, and not more than 100 millimetres apart where horizontal elements are spaced more than 1.2 metres apart;

(ii) horizontal elements shall be supported on posts that are spaced not more than 2.4 metres apart, securely fastened to the ground and structurally sound; and

(iii) glass panels used in Swimming Pool Enclosures shall be:

1. safety glass of the laminated or tempered type conforming to CAN/CGSB-12.1-M "Tempered or Laminated Safety Glass"; or
 2. wired glass conforming to CAN/CGSB-12.1-M "Wired Safety Glass".
- (d) any chain-link Fence that is used in or as part of a Swimming Pool Enclosure shall be constructed in a good, workmanlike manner and made up of not greater than 40 millimetres diamond mesh, and galvanized steel wire not less than 2.680 millimetres diameter (11 gauge);
- (e) any wrought iron Fence that is used in or as part of a Swimming Pool Enclosure shall be constructed in a good, workmanlike manner and with at least 1 meter between horizontal members and with no greater than 10 centimeters of spacing between vertical bars; or
- (f) a combination of the above or such other material design or construction as will provide an equivalent degree of safety and which is approved in writing by the CBO.
- 6.3 Where a Swimming Pool Enclosure or Temporary Enclosure is a building, accessory building or structure, it shall be constructed of materials that will withstand weathering and will remain in place when reasonable loads are applied.
- 6.4 No Swimming Pool Enclosure or Temporary Enclosure shall have any unprotected openings that would permit the passage of a sphere larger than 100 millimetres in diameter within or below the enclosure.
- 6.5 No Swimming Pool Enclosure or Temporary Enclosure shall have any members or attachments that could facilitate climbing on the exterior face of a pool enclosure or temporary enclosure for a distance between 100 millimetres and 1.2 meters from the grade.
- 6.6 No condition that facilitates climbing a Swimming Pool Enclosure or Temporary Enclosure may be permitted to remain within 1.0 meter of the exterior of the pool enclosure or temporary enclosure.
- 6.7 Notwithstanding any other provisions of this by-law, a Temporary Enclosure:
- (a) shall have a Height of not less than 1.2 meters along its entirety;

- (b) may be constructed of plastic mesh having openings no greater than 38 millimetres;
- (c) shall have a steel T-bar post installed at intervals no less than every 2 meters;
- (d) shall have a 9-gauge galvanized steel wire located at the top and bottom of such fencing; and
- (e) shall be continuously erected and maintained in a workmanlike manner.

Notwithstanding the above requirements, a temporary enclosure may be constructed in a manner that in the opinion of the CBO will provide a satisfactory degree of safety, provided such is approved by the CBO in writing prior to its construction.

6.8 For an above-ground Swimming Pool, the exterior side of the above-ground Swimming Pool structure and any rail or Guard attached thereto shall constitute a Pool Enclosure and the provisions of this by-law shall apply to such sides of the Swimming Pool. In addition, the Owner of the property on which such above-ground Swimming Pool is located and shall ensure the following requirements are complied with at all times:

- (a) the means of entry within the Swimming Pool Enclosure shall be kept closed and locked except when the Swimming Pool or enclosed area is in use by the Owner, it's invitees or licensees;
- (b) where the means of entry to the Swimming Pool Enclosure is with a ladder, such ladder shall be removable from the vicinity of the pool or be designed to be lifted and locked or be designed to have a lockable cover when the pool is not in use;
- (c) the exterior sides of the above-ground Swimming Pool structure and the Outside face of any rail or Guard shall be constructed as a Swimming Pool Enclosure, in a manner that will not facilitate climbing;
- (d) where a platform or deck is constructed adjacent to an above-ground Swimming Pool and such platform or deck is higher than 0.6 meter above the adjacent grade, a rail or Guard of not less than 0.9 meter in Height shall be provided around the Outside perimeter of such deck; notwithstanding the

other provisions of this by-law, such a rail or Guard may be constructed within 1.2 meters of the nearest edge of the water contained in the above-ground Swimming Pool;

- (e) notwithstanding any other provisions of this by-law, the combined Height of the exterior sides of the Swimming Pool structure and any rail or Guard attached thereto shall be a minimum of 1.5 meters and may be a maximum of 2.5 meters in Height above the adjacent grade; and
- (f) the pool, platform and/or deck shall be setback from the Lot Lines in accordance with the Town's applicable zoning by-law or regulations.

7. Pool Construction and Filling of New Pools

7.1 While under construction, every privately owned outdoor Swimming Pool, or the site on which a Swimming Pool is to be constructed, shall be enclosed with a Temporary Enclosure, as described in this by-law, until such time as construction is completed and a Swimming Pool Enclosure has been erected in compliance with the provisions of this by-law.

7.2 No Person shall place or allow water to remain in a newly constructed Swimming Pool, until:

- (a) the CBO or their designate has been notified and the Pool Enclosure has been inspected and accepted; and
- (b) the provisions of this by-law and applicable law have been fully complied with.

7.3 Despite Section 6.10, a Person may fill a Swimming Pool with water when a Temporary Enclosure has been erected in compliance with this bylaw, but the Swimming Pool shall not be used until a permanent Swimming Pool Enclosure has been erected and the Town has conducted an inspection and confirmed completion of the permanent Swimming Pool Enclosure in compliance with this bylaw and the applicable Swimming Pool Enclosure Permit.

8. Hot Tubs and Whirlpools

8.1 Notwithstanding the provisions of this by-law, a Swimming Pool that is a hot tub, whirlpool, or swim spa and has a structurally adequate cover over its entirety that

is permanently attached, that may be locked and that will support a weight of at least 27.2 kilograms, is not required to be enclosed by a Swimming Pool Enclosure or a Temporary Enclosure at any time and is not required to have a Swimming Pool Enclosure Permit in place to conduct construction.

- 8.2 The Owner of a property on which a Swimming Pool that is a hot tub, whirlpool, or swim spa is located shall ensure that the cover for such remains securely closed and locked at all times when it is not in use by the Owner, its invitees or licensees.

9. **Fence Variances**

- 9.1 Where a proposed or existing Fence does not comply with this By-law, the Owner of the lot on which the 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.

- 9.2 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, as prescribed in the Fees and Charges By-law.

- 9.3 The form, content, terms, conditions and requirements of an application for a variance shall be as prescribed by the Director from time to time and the Director may, without limiting the Director's authority to prescribe the application and its form, content, terms, conditions and requirements, require as part of an application:

- (a) the name, address and contact information of the applicant;
- (b) the address of the lot subject to the variance request;
- (c) enumeration of the specific Section(s) of the by-law from which the variance is sought;
- (d) a detailed description explaining why the applicant requires the variance;
- (e) a description of the Fence, or proposed Fence, including the dimensions and the specifications of the construction and installation;
- (f) a survey of the lot identifying the location of the Fence, or proposed Fence;
- (g) a site plan of the lot identifying the location of the Fence, or proposed Fence;

- (h) proof of notification of property Owners of properties that abut the property subject to the proposed variance by personal service or prepaid first class mail, which notification shall:
 - (i) set out the specifications of the Fence, or proposed Fence, subject to the proposed variance;
 - (ii) describe the reason(s) for the exemption request, and
 - (iii) inform that objections to the proposed variance are to be forwarded to the Director within ten (10) days of receipt of the notification;
- (i) any affidavits, drawings, plans, surveys, photographs and other documents the Director deems to be necessary in order to assess the proposed application;
- (j) Any information deemed necessary by the Director to be able to evaluate the application with respect to the proposed variance and the associated timeframes.

9.4 Upon receipt of a complete application for a variance and receipt of the applicable fees, as established in the Town's Fees and Charges By-law, the Director shall make investigations as necessary to assess the Application and consider the evaluation criteria outlined herein and may, in accordance with the criteria and requirements set out in this by-law:

- (a) approve the variance;
- (b) refuse the variance;
- (c) impose such conditions and terms on an approved variance as deemed appropriate by the Director.

9.5 As part of reviewing and evaluating any application for a variance, the Director shall consider whether:

- (a) it is in accordance with the general intent and purpose of this by-law;
- (b) the resulting Fence with the variance would be in keeping with the surrounding area and would there be any negative impact on adjacent residents;

- (c) there any special circumstances and whether strict application of the provisions of this by-law would result in unnecessary difficulty or hardship for the applicant; and
 - (d) Approval of the variance would result in any impacts to the health, safety or welfare of the public.
- 9.6 Upon making a decision pursuant to Section 9.4 and 9.5, the Director shall inform the applicant, as well as any abutting neighbours that submitted objections to the Town, by way of a written notice setting out the grounds for the decision with reasonable particulars, and informing of the right to appeal such decision to the Tribunal by the applicant.
- 9.7 An applicant that is served with a decision notice pursuant to Section 9.6, may request an appeal of the decision of the Director to the Tribunal by delivering an appeal notice to the Clerk, in accordance with the provisions of this by-law and of the Tribunal By-law, within fifteen (15) calendar days of deemed receipt of the decision notice.
- 9.8 A request for an appeal to the Tribunal pursuant to Section 9.7 shall be made in writing, shall set out the reasons for the appeal and shall be accompanied by an appeal fee, as set out in the Fees and Charges By-law.
- 9.9 Subject to the provisions of the Tribunal By-law, if a request for an appeal is not provided to the Clerk in accordance with the provisions of this and the Tribunal By-law within fifteen (15) calendar days of deemed receipt by the applicant of the notice pursuant to Section 9.6, the decision of the Director is deemed to be final.
- 9.10 Upon receipt of a notice to appeal a decision of the Director pursuant to Section 9.7, such request shall be processed and handled in accordance with the Tribunal By-law.
- 9.11 In deciding an appeal of a decision of the Director with respect to a Fence variance, the Tribunal shall consider the factors outlined in Section 9.5.
- 9.12 Any variance granted pursuant to this Section 9 by the Director or the Tribunal shall be effective and valid until such time as the Fence to which the variance applies is substantially replaced or removed entirely.

9.13 Where an applicant makes a request for an appeal pursuant to Section 9.7 and fails to appear at the time and place scheduled for the hearing of the appeal, or requests an adjournment on the day of the scheduled hearing, the applicant shall pay to the Town an administrative fee of \$100.00, which may be refunded at the discretion of the Tribunal if the nonattendance was unavoidable or the adjournment is in the public interest, not prejudicial to the expeditious determination of the proceeding or otherwise justified.

10. Administration and Enforcement

10.1 The Director and the CBO shall be responsible for and are delegated the power to administer and enforce this by-law, including prescribing the content of any forms or other documents required under this by-law.

10.2 The CBO shall be responsible for and is delegated the power to issue, revoke, suspend, set conditions of, process and administer Swimming Pool Enclosure Permits and any related applications.

10.3 The Director, the CBO and Officers of the Town are hereby delegated the authority to enforce this by-law, including the authority to conduct inspections pursuant to this by-law, the Act, as amended, and any other applicable by-law or legislation.

10.4 The Director and the CBO is authorized to delegate responsibilities for the administration and enforcement of this by-law to any Town staff or external third parties deemed to be qualified and appropriate by the Director or CBO for such purposes.

11. Power of Entry, Inspection, Prohibitions

11.1 An Officer, or any other individual authorized to enforce this by-law on behalf of the Town, may at any reasonable time enter upon any land for the purpose of carrying out an inspection to determine whether the following are being complied with:

- (a) this by-law;
- (b) any permit issued pursuant to this by-law,
- (c) any direction or order under this by-law; or

(d) an order issued under Section 431 of the Act.

11.2 Where an inspection is conducted pursuant to this Section, an Officer or any other individual authorized to enforce this by-law on behalf of the Town, 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 and 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 tests, samples or photographs necessary for the purpose of the inspection.

11.3 No Person shall hinder or obstruct or attempt to hinder or obstruct the Town, its employees, officers or agents from carrying out any powers or duties under this by-law.

11.4 No Person shall fail to comply with, or contravene, any order or direction issued by the Town pursuant to this by-law or the Act.

11.5 Where an Officer, or an individual authorized to enforce this by-law, has reasonable grounds to believe that an offence has been committed by any Person, they may require the name, address and proof of identity of that Person, and the Person shall supply the required information.

11.6 No Person shall decline or neglect to give, produce or deliver any access, information, document or other thing that is requested by the Town pursuant to this by-law.

11.7 No Person shall knowingly make, participate in, assent to or acquiesce in the provision of false information in a statement, affidavit, application or other document prepared, submitted or filed under this by-law.

12. **Orders**

12.1 Where any Officer or the CBO is satisfied that a contravention of this by-law has occurred, such Officer or CBO may make an order requiring the Person who caused or permitted such contravention, or the Owner of the land on which the contravention occurred, to discontinue the contravening activity and/or to do work to correct the contravention.

12.2 An order pursuant to this Section shall set out the following:

- (a) reasonable particulars identifying the location of the land on which the contravention occurred;
- (b) reasonable particulars of the contravention;
- (c) what is required of the Person subject to the order (i.e., what activity is to be seized and/or actions or work to be done);
- (d) the date by which there must be compliance with the order and/or, if any work is ordered, the date by which any such work must be done; and
- (e) information regarding the Town's contact person.

12.3 An order pursuant to this Section shall be deemed to have been received upon:

- (a) personal service of the order on the Person subject to the order;
- (b) one day after transmission of the order through electronic means to an email or social media address provided by the Person subject to the order;
- (c) one day after posting the order in a conspicuous location on the property subject to the order;
- (d) the fifth (5th) day after the order is sent by registered mail to the last known address of the Person who is subject to the order.

12.4 In the case where there is evidence that the occupant of the land subject to an order is not the registered property owner, such order shall be served on both the registered property owner and the occupant of the land.

13. **Remedial Action and Cost Recovery**

13.1 Wherever this by-law or an order issued under this by-law directs or requires any matter or thing to be done by any Person within a specified time period, in default of it being done by the Person directed or required to do it, the action may be taken

under the direction of the Director, CBO or an Officer at that Person's expense and the Town may recover the costs incurred through a legal action or by recovering the costs in the same manner as taxes.

13.2 For the purposes of taking remedial action under this Section, the Town, its staff and/or its agents may enter, at any reasonable time, upon any lands on which a default to carry out a required thing or matter occurred.

14. Offences and Penalties

14.1 Every Person who contravenes any provision 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*, R.S.O. 1990, c. P. 33, as amended.

14.2 Every Person who contravenes any order issued pursuant to this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.

14.3 If a corporation has contravened a provision of this by-law, including an order issued under this by-law, every director and officer who knowingly concurred in such a contravention is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.

14.4 Pursuant to Subsection 429(2) of the Act, all contraventions of this by-law or orders issued under this by-law are designated as multiple offences and continuing offences. If a contravention of any provision of this by-law has not been corrected, or an order issued under this by-law has not been complied with, the contravention of such a provision or an order shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected or an order not complied with. A multiple offence is an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law.

14.5 In addition to fines under this Section, a Person convicted of an offence under this by-law may be liable to a special fine in the amount of the economic advantage or gain that such a Person obtained from the contravention of this by-law.

14.6 Where a Person is convicted of an offence under this by-law, the court in which the 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.

15. **Administrative Penalties**

15.1 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this by-law, an individual authorized to enforce this by-law on behalf of the Town may issue an administrative penalty to the Person who has contravened this by-law.

15.2 Individuals authorized to enforce this by-law on behalf of the Town have the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. 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.

15.3 The amount of the administrative penalty for a breach of a provision of this by-law, shall be as established pursuant to applicable Town by-laws.

15.4 A Person who is issued an administrative penalty shall be subject to the procedures as provided for in the applicable Town by-laws relating to administrative penalties.

15.5 An administrative penalty imposed on a Person pursuant to this by-law that is not paid within fifteen (15) days after the day it becomes due and payable, constitutes a debt of the Person to the Town and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

16. **Presumption**

16.1 An Owner of a property on which a non-compliance or contravention has occurred shall be presumed to have carried out or caused or permitted to be carried out the non-compliance or contravention, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

17. **Line Fences Act**

17.1 With the exception of Section 20 of the *Line Fences Act*, the *Line Fences Act* shall not apply to any part of the Town.

18. Severability

18.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid or to be of no force and effect, it is the intention of the Town in enacting this by-law that such provision or part of a provision shall be severable, and such a decision shall not affect the validity of the remaining sections, subsections, clauses or phrases of this by-law.

19. Repeal

19.1 By-laws Number 4753.05.P and Number 6086-18, all as amended, are hereby repealed.

20. Effective Date

20.1 This by-law comes into full force and effect on the date of final passage hereof.

Enacted by Town of Aurora Council this xxth day of Month, Year.

Tom Mrakas, Mayor

Michael de Rond, Town Clerk

Schedule "A"

**TABLE 1
MAXIMUM HEIGHT OF FENCES**

Item #	Description of Fence	Fence on Single or Multiple Residential Property	Fence on Non-Residential Property	Hedge, shrub, or other vegetation that acts as a Fence.
1.	Fence in a Front Yard; And within 2.4 meters of a Lot Line abutting a Public Highway (A Public Highway does not include a public lane)	1.2 meters	1.2 meters	1.2 meters
2.	Fence in a Front Yard; And within 2.4 meters of a Lot Line abutting a Public Highway (A Public Highway does not include a public lane)	2.0 meters	2.0 meters	No Maximum
3.	Fence not in a Front Yard; and within 2.4 meters of a side Lot Line abutting a Public Highway (A Public Highway does not include a public lane); and within 2.4 meters of a Driveway.	2.0 meters	2.0 meters	2.0 meters
4.	Fence not in a Front Yard; and between 2.4 meters from a side Lot Line abutting a Public Highway (A Public Highway does not include a public lane) and the nearest wall of the main building extended to the rear Lot Line; and within 2.4 meters of a Driveway	2.0 meters	2.5 meters	No Maximum

5.	Fence on an unroofed deck; and not in a Front Yard; and not within 2.4 meters of a Lot Line abutting a Public Highway (a Public Highway does not include a public lane)	2.0 meters above surface of deck	2.0 meters above surface of deck	No Maximum
6.	Fence not in a Front Yard that also is not a Fence under items 3, 4, or 5 of this table and abutting a multi-residential property, a Non-Residential Property, a Public Highway or a public walkway.	2.5 meters	2.5 meters	No Maximum
7.	Fence for a tennis court, baseball diamond, or other recreational facility.	3.0 meters	No Maximum	No Maximum
8.	An Entry gate and associated entry features in a Rural Residential or Institutional Zone.	3.0 meters	N/A	3.0 meters