

# THE CORPORATION OF THE TOWN OF RAINY RIVER

## BY-LAW 1663-17

---

Being a by-law for regulating fences within the Town of Rainy River.

---

**WHEREAS** subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

**AND WHEREAS** section 10(2) of the *Municipal Act, 2001* authorizes a single tier municipality to pass by-laws respecting structures, including fences and signs;

**AND WHEREAS** section 98(1) of the *Municipal Act, 2001* provides that a municipality may provide that the *Line Fences Act* does not apply to all or any part of the municipality;

**AND WHEREAS** section 26 of the *Line Fences Act* provides that, with the exception of section 20, the *Line fences Act* does not apply to land in an area that is subject to a by-law for apportioning the costs of line fences passed under the *Municipal Act, 2001*;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF RAINY RIVER ENACTS AS FOLLOWS:**

### **DEFINITIONS:**

1. In this by-law:
  - a. **Adjoining owner** means the owner of the land that is adjacent to the land of another owner seeking to building a line fence;
  - b. **Corporation** means The Corporation of the Town of Rainy River;
  - c. **Fence** includes a railing, wall, line of posts, wire, gate, boards, pickets or other similar substances used to enclose or divide in whole or in part a yard or other land to establish a property boundary or to provide privacy;
  - d. **Intersection** means the area embraced within the prolongation or connection of the lateral street lines of two or more streets that join one another at an angle, whether or not one street crosses the other.
  - e. **Lane** means a public thoroughfare which affords only a secondary means of access from vehicular traffic to abutting lots and which is not intended for general traffic circulation;
  - f. **Line Fence** means a fence marking the boundary between adjoining parcels of land;
  - g. **Lot** means a parcel of land which is capable of being legally conveyed pursuant to Section 50 of the *Planning Act*;
  - h. **Lot, corner** means a lot situation at the intersection of two or more streets, or at the intersection of a street and a railway right-of-way, or a lot abutting on one or more parts of the same street, in which an interior angle of less than one hundred and thirty-five (135) degrees is contained, between the front and side lot lines abutting the said street or streets;
  - i. **Lot, interior** means a lot other than a corner lot;
  - j. **Lot line** means any boundary of a lot and/or the vertical projection thereof;
  - k. **Lot line, front** 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 the street;
    - iii. In the case of a through lot or a corner lot with two lot lines of equal length abutting roads, the lot line used for the principle entrance; and
    - iv. In the case where a lot abuts only a road cul-de-sac, all of the frontage on the road cul-de-sac.
  - l. **Lot line, rear** means the lot line farthest from or opposite to the front lot line;
  - m. **Lot line, side** means a lot line other than a front or rear lot line;
  - n. **Non-residential property** means a property with uses other than residential or multi-residential and includes schools and other institutional uses but does not include a street or public walkway;
  - o. **Open construction** includes chain link or lattice or other similar open construction;

- p. **Owner** means the registered owner or mortgagee in possession;
- q. **Officer** means the Municipal Chief Building Official or Provincial Offences Officer or a Police Officer, whose duties include the enforcement of this by-law;
- r. **Parcel of land** means an area of land held in unity of ownership;
- s. **Person** means an individual, firm, corporation, association, or partnership and includes an Owner;
- t. **Public authority** means any Federal, Provincial, District or Municipal agencies, including local boards thereof, any Public Utility Commission including telephone, gas and hydro and all Boards of Education;
- u. **Residential property** means a property that is used for residential purposes;
- v. **Sight triangle** means on a corner lot within the triangular space formed by the street lines and a line drawn from a point in one street line to a point in the other street line, each such point being 6 metres (20 feet) measured along the street line from the point of intersection of the street lines which would obstruct the vision of a motor vehicle. Where the two street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be in the intersection of the projection of the street lines or the intersection of the tangents to the street lines.
- w. **Street** means a public highway or public road under the jurisdiction of the Corporation and which is presently open and maintained by the Corporation on a year-round basis;
- x. **Street line** means the limit of the street and is the dividing line between a lot and a street;
- y. **Temporary fence** means a fence erected or maintained for defined and limited period of time and, in no case shall such duration exceed six months unless required to remain by law or by a public authority in the interests of safety;
- z. **Through lot** means a lot bounded on opposite sides by streets;
- aa. **Uncontrolled intersection** means an intersection of two or more streets where no traffic lights or four-way stop signs are used to indicate the right-of-way;
- bb. **Yard** means any unoccupied space appurtenant to a building measured from the closest supporting structure of the building to the lot line.
- cc. **Yard, front** means a yard extending across the full width of the lot between the front lot lines and the nearest part of any building or structure for which the yard is required;
- dd. **Yard, rear** means a yard extending across the full width of the lot between the rear lot line and the nearest wall of any building on the lot for which the yard is required;
- ee. **Yard, side** means a yard extending from the front yard to the rear yard;
- ff. **Zoning By-law** means any by-law administered by the Corporation passed pursuant to section 34 of the *Planning Act*, R.S.O. 1190, c. P.13, or a predecessor successor thereof, as may be amended from time to time.

#### **APPLICATION OF BY-LAW**

2. This By-law applies to all land within the municipal jurisdiction of the Town of Rainy River.

#### **FENCES – CONTRARY TO REGULATIONS**

3. No person shall have, permit, construct, erect, or maintain or cause to have, permit, construct, erect, or maintain a fence within the Town of Rainy River unless such fence is in compliance with this By-law, and/or any other by-law that may apply.

#### **FENCES ON TOWN PROPERTY**

4. No person shall have, permit, construct, erect, or maintain, or cause to have, permit, construct, erect, or maintain, a fence on property of The Corporation of the Town of Rainy River, including any street unless:
  - a. Written consent or authorization of the Corporation has been obtained;
  - b. Such a fence conforms to the provisions of this by-law; and
  - c. The person seeking to construct on Town property agrees, if required, to enter in to an encroachment agreement with the Corporation to provide for the removal of same from the property as and when directed to do so by the Corporation.

#### **GENERAL PROVISIONS – ALL FENCES**

5. No fence shall be constructed, maintained or caused to be constructed or maintained such that it encroaches on or over a roadway or sidewalk or which adversely affects the safety of or constitutes an obstruction of view or impedes the passage of vehicular or pedestrian traffic.
6. No fence shall be located or constructed so as to block access to a parking space as required by the Zoning By-law unless such fence is constructed with a gate at least 2.59 metres (8.5 feet) wide giving access to such parking space.
7. Barbed wire and/or razor wire shall not be used on any residential property.
8. Notwithstanding the provisions of Section 7, barbed wire and/or razor wire may be used on a residential or non-residential property as part of or in conjunction with any fence required by law for public safety or the protection of property, provided no barbed wire or razor wire is located less than 2.14 metres in height above the ground.
9. No fence may be electrified unless the land which it encloses is lawfully used for agricultural purposes or the containment of livestock.
10. Section 7 does not apply to fences used for agricultural purposes or the containment of livestock.
11. No fence shall be maintained or caused to be maintained in a damaged or un-repaired state or condition by reason of fire, decay or otherwise and all fences shall be constructed or caused to be constructed in a sound manner and shall be protected by paint, preservative or other suitable weather resistant material.
12. All fences, including masonry, brick, stone and concrete, iron and metal bar fences shall be constructed and maintained in a manner to ensure safety, structural stability, and resistance to frost action.
13. Fences constructed of chain link shall:
  - a. Be constructed of galvanized steel wire not less than 2.65 mm diameter (No. 12 gauge) or of a minimum 0.89 mm diameter (No. 14 gauge) steel wire covered with vinyl or other approved coating forming a total thickness equivalent to 2.65 mm diameter (No. 12 gauge) galvanized wire; and
  - b. Be supported by a minimum 38 mm diameter galvanized steel posts each securely anchored and spaced not more than 3.5 metres on centre. Horizontal top and bottom rails shall be 31 mm minimum diameter galvanized steel, except that a 6 mm diameter galvanized steel tension rod may be substituted for the bottom horizontal rail.
14. Fences constructed of wood shall be supported by a minimum 89 mm by 89 mm or 125 mm diameter posts each securely embedded to a minimum depth of 0.6 metres below grade, be spaced not more than 3.05 metres on centre. The portion below grade treated with a wood preservative. Horizontal top and bottom rails shall be a minimum of 38 mm by 89 mm utility grade or better.
15. Where in order to make repairs, alterations or improvements to a fence, an owner of the fence is required to enter upon the adjoining land; before entering said land the owner shall advise the Town of Rainy River of the need to make such entry. Prior to entry the Town of Rainy River will advise the adjoining owner of the need for entry on his land. The owner of the fence shall ensure that the adjoining land is left at the same condition it was prior to such entry.
16. Where a fence is being erected between two lots, unless otherwise agreed between the owners of the said lots, the posts and structural members shall be located on the side of the fence facing the lot whose owner is erecting the fence.

17. A fence may be erected as a means of protection or as a means of landscaping along any lot line.

### **RESIDENTIAL PROPERTIES**

18. On a lot used for residential purposes no person shall have, permit, construct, erect or maintain, or cause to have, permit, construct, erect, or maintain a fence:

- a. Exceeding 1.22 metres in height within the front yard;
- b. Exceeding 1.83 metres in height within the rear or side yard, subject to the Sight Triangle provisions.

19. Notwithstanding section 18

- a. Fence height regulations shall not apply where such residential property is abutting and such fence is contiguous to a non-residential property, but in no event shall a fence exceed a height of 2.75 metres;
- b. Where grade elevations of adjacent lots differ, that portion of any fence exceeding 1.83 metres in height as measured from the lower of the differing grades shall be constructed of chain link, lattice or similar open construction so as to provide a uniform direct passage of light and air through not less than 60 percent of the surface of that portion of fence exceeding 1.83 metres as measured from the lower grade;
- c. Where the grade contours within the lot make compliance with the fence height regulations in Section 8 impossible, a fence may exceed 1.22 metres in height in the front yard, or 1.83 metres in height elsewhere on the lot, provided that the **average** height of the fence over any 2.44 metre portion does not exceed the said fence height regulations.

### **NON-RESIDENTIAL PROPERTIES**

20. On a lot used for non-residential purposes, no person shall have, permit, construct, erect, or maintain, or cause to have, permit, erect, or maintain a fence

- a. Exceeding 2.75 metres in height unless required by law or by a public authority in the interests of public safety to do so.
- b. Other than an unobstructed chain link fence having links of no less than 13.00 square centimeters and which does not otherwise exceed fence height requirements contained in this by-law, that exceeds 1.2 metres in height if such fence is located within the Sight Triangle.

21. Notwithstanding section 20, fences around tennis courts may be erected to a maximum height of 3.7 metres provided that:

- a. A fence shall be constructed of chain link with adequate posts, support wires and bracing of a corrosion resistant or treated material; and
- b. Shall not be located closer than 0.6 metres to any lot line.

### **LINE FENCES ACT – LINE FENCES**

22. The *Line Fences Act* shall not apply to any part of the Town of Rainy River

23. An owner of land may construct, replace, repair and maintain a line fence.

24. Where the owners of adjoining lands are in agreement or are able to reach agreement on the details of construction or replacement of a line fence, each of them shall construct or replace a reasonable proportion of the line fence, or shall bear a reasonable and just proportion of the cost of any work required to do so, in accordance with the agreement reached between the owners, regardless of any provision to the contrary in this by-law.

25. Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section 24 above, an owner desiring to construct or replace a line fence may do so subject to complying with the following requirements:

- a. The owner must deliver a notice (the "Notice of Intent") to the adjoining owner by registered mail, advising of his or her intent to construct or replace a line fence,

- b. The Notice of Intent must contain the following minimum information:
    - i. A copy of three (3) written quotes for the actual cost or basic cost for the fencing work to be undertaken;
    - ii. A paragraph stating that “the construction or replacement of the line fence will commence fourteen (14) business days after the date of mailing of the Notice of Intent and the owner may seek a contributory payment for the work to the line fence from the adjoining owner in accordance with the applicable by-law”;
    - iii. A further paragraph stating that “the adjoining owner may obtain three (3) additional quotes for presentation to the owner not later than ten (10) days from the date of mailing of the Notice of Intent”;
    - iv. A complete copy of this by-law must be attached to the Notice of Intent
26. In cases where the cost of construction or replacement of a line fence is in dispute, the cost shall be apportioned as follows:
- a. The adjoining owner shall pay fifty percent (50%) of the basic cost or fifty percent (50%) of the actual costs, whichever is the lesser, having considered all the fencing quotes exchanged, and
  - b. The owner shall pay the balance of the actual costs.
27. Subject to Sections 28 and 29, once a fence has been erected, the cost of repairs or maintenance to a line fence shall be borne equally by the owner and the adjoining owner.
28. The cost of repairs to a line fence shall;
- a. Be borne by the owner if he or his invitees caused the damage necessitating the repair,
  - b. Be borne by the adjoining owner if he or his invitees caused the damage necessitating the repair,
  - c. Be borne equally by the owner and the adjoining owner if the damage necessitating the repair was caused by natural disaster, subject to section 29.
29. If a tree causes damage to a line fence, whether by accident, or one or more individual’s carelessness, negligence, deliberate intent or otherwise, the owner of the land on which the tree stood shall at his sole expense, forthwith remove the tree and repair the fence.
30. Where the municipality is the adjoining owner of lands other than lands as described in subsection 4(a), the cost of construction, replacement, repair or maintenance of a line fence shall be assigned as follows:
- a. The owner shall pay ninety five percent (95%) of the cost of the work
  - b. The municipality shall pay five percent (5%) of the cost of the work
31. Compliance with this by-law does not exempt an owner or the adjoining owner for the requirement to comply with the Town of Rainy River Zoning By-Law.
32. Any line fence constructed, replaced or repaired or maintained within an area designated as a heritage conservation district pursuant to Part V of the Ontario Heritage Act, R.S.O. 1990, O.18 as amended, is subject to all requirements for obtaining a permit pursuant to such legislation.

### **SAFETY**

33. Notwithstanding any height restriction for fences in this by-law, the Corporation or any public authority with jurisdiction over a specific use or matter may, in writing, permit a fence to whatever height is necessary to ensure public safety.
34. Notwithstanding any of the provisions herein to the contrary, where, in the opinion of the Corporation, an obstruction exists that adversely affects the safety of vehicular or pedestrian traffic, the height restrictions of this by-law shall not apply.

### **SIGHT TRIANGLE**

35. Notwithstanding any of the provisions herein to the contrary, where, in the opinion of the Corporation, an obstruction exists within the sight triangle, the height restrictions of this by-law shall not apply.

### **CALCULATION OF HEIGHT**

36. For the purpose of this by-law, the height of any fence is calculated from the mean grade elevation of the ground at the lot lines to the highest point of the fence.

37. Where the level of the ground is altered or the base on which the fence is situated is arranged for the purpose of raising the fence to a height which would otherwise have been unlawful, there shall be included in the calculation of the height of the fence the vertical measurement of the alteration or of the arrangement.

### **OFFENCE AND PENALTY**

38. Every person who contravenes the provision of this by-law is guilty of an offence and upon conviction is liable to a maximum fine or penalty as provided under the Provincial Offences Act.

39. An Officer and/or anyone under the Officer's direction may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this by-law is being complied with.

40. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law, including carrying out an inspection.

41. For the purposes of an inspection, the Officer may:

- a. Require the production for inspection of documents relevant to the inspection;
- b. Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- c. Require information from any person concerning a matter related to the inspection; and
- d. Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purposes of the inspection.

### **ENFORCEMENT AND REMEDIAL ACTION**

42. Every person who has or does, erect, construct, maintain, or permit to be erected, constructed or maintained, any fence that does not comply with the provisions of this by-law shall forthwith take any necessary action to ensure that the fence complies with the provisions of this by-law.

43. In default of the work required by this by-law not being done by the person directed or required to do it, the Town, in addition to any other remedies it may have, may do the work or cause the work to be done, at the person's expense, and may enter upon the land, at any reasonable time for this purpose.

44. The Town may recover the costs incurred by it in doing the work or causing it to be done from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

### **EXCEPTIONS**

45. The provisions of this by-law shall not apply to the erection of fences, temporary or otherwise, erected in the interest of public safety as may be determined by the Officer.

46. Notwithstanding any other provision herein, a fence, which is constructed as a requirement of a registered agreement or agreements entered into with the Corporation of the Town of

Rainy River pursuant to the provisions of the Planning Act, as amended, or any plans approved by the Town, shall be deemed not to contravene the provisions of this by-law.

47. This By-law does not apply to a public authority which erects or causes to erect a noise barrier along a street or erects or causes to erect any other type of fence along a street for the purpose of ensuring public safety, noise control, or any other similar purpose.

48. Notwithstanding the provisions of this by-law to the contrary, save and except for a fence which is located within a sight triangle, any fence that is in existence prior to the date of the enactment of this by-law, and in compliance with other applicable regulations, including the Town of Rainy River by-laws, shall be deemed to comply with this by-law and may be maintained with the same material, height and dimension as previously existed including any repair work that may be done to such fence.

**EXEMPTION**

49. Council may, upon application by any owner of land, enact a resolution to grant an exemption from any of the restrictions set out in this by-law, subject to any conditions imposed by Council.

50. Every application for an exemption shall be in writing and shall contain the following supporting documentation:

- a. Property survey or site plan;
- b. Specifications pertaining to the description of the fence;
- c. Specifications pertaining to the construction and installation of the fence; and
- d. The application fee (if applicable).

**REPEAL, TRANSITION**

51. By-law 1321-96 and all amendments thereto are hereby repealed.

52. In the case of conflict between the provisions of this by-law and the provisions of any land use by-law, the provisions of this by-law shall prevail, except where this by-law specifies that the provisions of the land use by-law shall apply.

**FORCE AND EFFECT**

53. This by-law shall come into force and take effect upon the final passing thereof.

READ the first time in open Council this 14<sup>th</sup> day of November, 2017.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Deputy Clerk-Treasurer

READ the second time in open Council this 14<sup>th</sup> day of November, 2017.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Deputy Clerk-Treasurer

READ the third time and finally passed in open Council this 14<sup>th</sup> day of November, 2017.

---

Mayor

---

Deputy Clerk-Treasurer