

**By-law 23-2014
of The Corporation of the City of Oshawa****WHEREAS**

1. The Council of The Corporation of the City of Oshawa wishes to regulate the height of fences, natural features and objects in certain circumstances;

NOW THEREFORE the Council of The Corporation of the City of Oshawa ENACTS AS FOLLOWS:

Interpretation

1. In this By-law:
 - 1.1. “By-law” means this by-law and any schedule to this by-law as they may from time to time be amended.
 - 1.2. “City” means The Corporation of the City of Oshawa.
 - 1.3. “Council” means the City’s Council.
 - 1.4. “Director” means the City’s Director, Municipal Law Enforcement and Licensing Services.
 - 1.5. “Driveway Sight Triangle” means a triangular space bounded by a Street Line, the side of a Driveway leading from that street, and a straight line joining the points in that Street Line and the side of the Driveway which points are each a distance of 3.0 metres from the point of their intersection.
 - 1.6. “Fence” means a structure that encloses or acts as a barrier to a Lot or that defines a Lot Line.
 - 1.7. “General Fees and Charges By-law” means the City’s By-law 13-2003 as from time to time amended and includes any successor by-law.
 - 1.8. “Height” means, as applicable,
 - (a) the vertical distance between the finished grade at the base of a Fence, Natural Feature, thing or object and the highest point of the Fence, Natural Feature, thing or object;
 - (b) for a Fence atop a retaining wall, the vertical distance between the top of the retaining wall and the highest point of the Fence; or
 - (c) for a Sight Triangle, the vertical distance between the grade of the centerline of the abutting street and the highest point of the Fence, Natural Feature, thing or object.
 - 1.9. “Natural Feature” includes hedges, trees, shrubs, plants and other living things and natural objects.
 - 1.10. “Officer” is as defined in the City’s Inspection By-law 64-2008 as from time to time amended.
 - 1.11. “Owner” means each Person who or which owns or occupies a Lot.
 - 1.12. “Person” includes an individual, partnership, association, firm or corporation.
 - 1.13. “Work Order” means a work order given pursuant to section 5.
 - 1.14. “Zone” means a zone established in the City’s Zoning By-law 60-94, as from time to time amended.

1.15. The following terms are as defined in the City's Zoning By-law 60-94, as from time to time amended:

- (a) "Corner Lot";
- (b) "Defining Angle";
- (c) "Driveway";
- (d) "Exterior Side Yard";
- (e) "Front Lot Line";
- (f) "Front Yard";
- (g) "Lot";
- (h) "Lot Line";
- (i) "Rear Lot Line";
- (j) "Rear Yard";
- (k) "Side Lot Line"
- (l) "Side Yard";
- (m) "Sight Triangle";
- (n) "Street Line";
- (o) "Through Lot"; and
- (p) "Yard".

Application

- 2. Subject to the provision of this By-law, this By-law applies to all Lots within Residential, Office, Commercial (excluding the Central Business District Zone) and Mixed Use Zones.

Fence Materials

- 3. No Owner shall permit a Fence to exist or to be constructed with materials or in a manner that may pose a hazard to humans. Without limitation, no Owner shall permit a Fence that is electrified or that is constructed with razor wire, barbed wire, or sharp projections.

Height Restrictions

- 4. No Owner shall permit a Fence, Natural Feature or other thing or object on a Lot to exist at Heights exceeding the most restrictive, as applicable, of the following:
 - 4.1. Subject to subsection 4.5, a Natural Feature within 2.0 metres of the Front Lot Line shall not exceed 0.9 metre. (116-2014)
 - 4.2. Subject to subsection 4.5, a Fence within a Front Yard shall not exceed 0.9 metre. (116-2014)
 - 4.3. A Fence within 2.0 metres of a Rear Lot Line or a Side Lot Line shall not exceed 2.2 metres.
 - 4.4. Fences on Through Lots shall be deemed to be permitted as if exempted by the Director pursuant to section 16 but subject to such conditions as the Director may impose pursuant to section 17 including conditions respecting the Height of such Fences.

- 4.5. That part of a Fence or a Natural Feature within 1.0 metre of that part of the Lot Line between the Rear Yard of one Lot and the Front Yard of another Lot shall not exceed 2.2 metres.
- 4.6. In all parts of the City other than within the Central Business District Zone, all Fences, Natural Features, things and objects within a Sight Triangle or a Driveway Sight Triangle shall not exceed 0.9 metre.
- 4.7. A Fence between a Lot in a Residential Zone and a Lot in a Commercial, Industrial or Airport Zone shall not exceed 3.0 metres.

Work Order

5. Without limiting remedies otherwise available at law, an Officer may give to an Owner a Work Order where the Officer has reason to believe that the Owner has not complied with this By-law.
6. A Work Order may require the Owner to do at the Owner's expense each of the following as the Officer considers appropriate:
 - 6.1. to give to the Director forthwith upon the Director's requests from time to time such information and documents that the Director determines are relevant to the Work Order; and
 - 6.2. to do work to correct the contravention.
7. A Work Order shall include the following information:
 - 7.1. particulars of the reasons for which the WorkOrder was given;
 - 7.2. particulars of the things the Owner is required to do;and
 - 7.3. information respecting the process by which the Person may exercise the Person's right to appeal to the Hearings Officer against the Work Order.
8. Subject to section 10, an Owner to whom or to which a Work Order is given shall forthwith comply with it.
9. An Owner to whom or to which a Work Order is given may appeal to the Hearings Officer against it pursuant to section 20.
10. An appeal to the Hearings Officer operates as a stay of the Work Order until the Hearings Officer makes a final decision respecting the appeal.
11. A Work Order that is not appealed pursuant to section 20 is final and is not subject to review including review by any Court.
12. Despite any other provision of this By-law, the Director may rescind a Work Order at any time.

Remedial Work

13. Subject to any decision of a Hearings Officer pursuant to subsection 20.6 and without limiting remedies otherwise available at law, where an Owner does not comply with a Work Order by the fifteenth (15th) day following the date on which any matter or thing is required to be done pursuant to the Work Order, the Director may, in the Director's sole discretion, cause the matter or thing to be done at the Owner's expense and may cause to be done such other things respecting recovery of costs as are prescribed by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

Exceptions / Exemptions

14. This By-law does not apply to a Fence that exists on the date of the passing of this By-law to the extent that, in the Director's opinion, the Fence complied with all law applicable to the Fence on the day immediately preceding the date of the passing of this

By-law, and then only until such time as the Fence is, in the Director's opinion, replaced, reconstructed or substantially repaired. (47-2015)

15. Despite any other provision of this By-law, this By-law does not apply to the following:
 - 15.1. a tree that is not within a Sight Triangle or a Driveway Sight Triangle;
 - 15.2. a Fence that abuts or that is within railway lands;
 - 15.3. a noise control barrier or device required by a federal, provincial or municipal government with jurisdiction to impose the requirement;
 - 15.4. a Fence erected or Natural Feature planted or placed by a federal, provincial or municipal government; (116-2014)
 - 15.5. a Fence or Natural Feature that complies with a municipal permit or with a site plan agreement, subdivision agreement or other development agreement to which the City is a party; (116-2014)
 - 15.6. a Fence that delineates an area lawfully used as a tennis court, golf course, baseball diamond, soccer field or football field; or
 - 15.7. a "Guard" that is defined and required by and that complies with the "Building Code" as defined in the *Building Code Act, 1992*, S.O. 1992, c. C.23, s. 1(1).
16. Subject to the following, the Director may exempt any Person from all or any part of this By-law:
 - 16.1 The Person has submitted an application and such information in support of the application as the Director may require;
 - 16.2 The Person has paid the application fee from time to time established by the General Fees and Charges By-law;
 - 16.3 The Person has consented to the disclosure of any personal information of the Person provided by the Person in relation to the Person's application for an exemption;
 - 16.4 The City has given no fewer than ten (10) business days' notice to each Person that owns a Lot located within two (2) metres of any Lot Line of the Lot to which the exemption application relates ("Neighbour");
 - 16.5 The City's notice pursuant to subsection 16.4 includes the application and information submitted pursuant to subsection 16.1 and advises each Neighbour that the Neighbour has ten (10) business days from the effective date of notice within which to submit to the Director written representations in relation to the exemption request;
 - 16.6 The Director considers any representations received pursuant to and within the time limited by subsection 16.5; and
 - 16.7 The Director is satisfied that the granting of the exemption would maintain the general intent and purpose of this by-law.
17. The Director may impose such conditions as the Director determines are appropriate in relation to an exemption granted by the Director.
 - a. The Director shall give notice of the Director's decision respecting an exemption pursuant to section 16 including any condition imposed pursuant to section 17 which notice shall be given to the Person submitting the exemption request pursuant to section 16 and to each Neighbour who submitted representations pursuant to and within the time limited by subsection 16.5 and shall include information respecting rights of appeal pursuant to this By-law including the time limited for and applicable fee in relation to exercising a right of appeal;
18. An Owner and each Neighbour may appeal to the Hearings Officer pursuant to section 20 against the Director's decision respecting an exemption pursuant to section 16 including any condition pursuant to section 17.
19. A decision of the Director respecting an exemption pursuant to section 16 including any condition pursuant to section 17 that is not appealed pursuant to section 20 is final and is

not subject to review including review by any Court.

Hearings Officer

20. The following applies to appeals to the Hearings Officer:

- 20.1. A Person's right to appeal expires if it has not been exercised in the manner prescribed in subsection 20.2 before 4:30 p.m. on the tenth (10th) business day after the Director's decision pursuant to sections 16 or 17 or the Work Order is given to the Person at which time the Director's decision or the Work Order, as applicable, is final and is not subject to review including review by any Court.
- 20.2. A right to appeal is exercised by:
 - (a) giving to the Director written notice of the appeal that includes particulars of all grounds upon which the appeal is made; and by
 - (b) paying the fee from time to time prescribed by the City's General Fees and Charges By-law.
- 20.3. The Person and, as applicable, each Neighbour who submitted representations pursuant to and within the time limited by subsection 16.5 shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
- 20.4. Where the Person fails to appear at the time and place scheduled for a hearing of the appeal, the Person's appeal shall be deemed to be dismissed and the Person shall pay to the City an administrative fee as from time to time prescribed by the General Fees and Charges By-law.
- 20.5. Subject to subsection 20.4, the Hearings Officer shall not decide the appeal unless the Hearings Officer has given each of the Person, the Director and the Officer an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
- 20.6. The Hearings Officer may make any decision that the Director or an Officer could have made pursuant to this By-law.
- 20.7. The decision of the Hearings Officer is final and not subject to review including review by any Court.
- 20.8. A copy of the decision of the Hearings Officer shall be provided to the Person and, as applicable, to each Neighbour who submitted representations pursuant to and within the time limited by subsection 16.5";

Administrative Penalties

21. Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.
22. Each Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$125 for each day on which the contravention occurs or continues.

Offences

23. Each Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine of not less than \$300 and not more than \$10,000.

Notice

24. Subject to section 25, any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
 - 24.1. when a copy is delivered to the Person to whom it is addressed;
 - 24.2. on the fifth (5th) day after a copy is sent by mail to the Person's last known address;

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- 24.3. upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number;
- 24.4. By posting a copy within the Lot Lines of the Lot to which the notice or document relates; or (116-2014)
- 24.5. upon the sending of a copy by e-mail transmission to the Person's last known e-mail address.
- 25. Any notice or document respecting this By-law to be given to the City shall be in writing, shall be given in any of the following ways and is effective:
 - 25.1. when a copy is delivered to Service Oshawa during its regular business hours at its reception area in the City's Civic Administration Complex, 1st Floor, West Wing, 50 Centre Street South, Oshawa; or
 - 25.2. on the fifth (5th) day after a copy is sent by registered mail or by regular lettermail to "Administrative Appeals, c/o MLELS, City of Oshawa, 50 Centre Street South, Oshawa, Ontario, L1H 3Z7".

General

- 26. For the purpose of subsection 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, it is the opinion of Council that the powers delegated to the Hearings Officer and to the Director pursuant to this By-law are of a minor nature, having regard to the number of people, the size of geographic area and the time period affected by the exercise of such powers.
- 27. The General Fees and Charges By-law is further amended by adding to its Schedule "A" two new rows under the heading, "Hearings and Administrative Penalty Systems", as follows:

Each appeal to the Hearings Officer against a decision to deny an exemption or a condition imposed in relation to an exemption pursuant to the Fence and Sight Triangle By-law	\$250
Each appeal to the Hearings Officer against a work order given pursuant to the Fence and Sight Triangle By-law	\$250

- 28. This By-law is effective when it is passed.
- 29. The short title of this By-law is the "Fence and Sight Triangle By-law".

By-law passed this eighteenth day of February, 2014.

Mayor

City Clerk