



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 71-2016

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### Being a By-law to Regulate Fences in the Town of Fort Erie and to Repeal By-law No. 70-2013

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#### Proposed additions

#### Proposed deletions

**Whereas**, Subsection 11 of the *Municipal Act, 2001* S.O. 2006,c.32 as amended provides that the municipality may pass by-laws relating to the health, safety and well-being of the inhabitants of the municipality, and to pass by-laws respecting structures, including fences, and

**Whereas** Subsections 445 and 446 of the *Municipal Act, 2001* as amended, provides that if a municipality has the authority under this or any other *Act* or under a by-law under this or any other *Act* to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the persons expense, and may recover the costs by adding them to the tax roll and collecting them in the same manner as taxes, and

**Whereas** the Town's Comprehensive Zoning By-law 129-90, as amended, was further amended by By-law No. 69-2013, passed by the Municipal Council of the Town of Fort Erie on July 15, 2013, to include regulations relating to fences for the purpose of requests for relief to the Committee of Adjustment, and

**Whereas** By-law No. 70-2013 was passed by the Municipal Council of the Town of Fort Erie on July 15, 2013 to regulate fences in the Town of Fort Erie, and

**Whereas** the Town's Comprehensive Zoning By-law 129-90, as amended, was further amended by By-law Nos. 133-2014 and 152-2015 to amend the regulations relating to fences, and

**Whereas** Report No. PDS-53-2016 was considered at the Council-in-Committee Meeting held on June 13, 2016 and subsequently approved by Council to repeal and replace By-law No. 70-2013, and to amend Comprehensive Zoning By-law No. 129-90 as amended to remove fence regulations, and

**Whereas** it is deemed desirable to repeal and replace By-law No.70-2013, as amended

**Now Therefore** the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

#### 1. **Short Title**

The short title of this By-law is the "Fence By-Law".

## 2. **Definitions**

2.1 The following terms are defined for the purposes of this by-law:

**“Appropriate Approval Agency”** means the agency that has the authority to determine the location of the 1 to 100 year flood line.

**“Chief Building Official”** means the Chief Building Official appointed by Council and charged with the duty of enforcing the provisions of the *Building Code Act, 1992*, S.O. 1992, c.23, and the provisions of the Building By-law.

**“construct”** means to erect, install, extend or make material alterations or repairs.

**“corner lot”** means a lot having 2 or more street lines intersecting at an angle of not more than 135 degrees, provided that where the street lines of a lot are curved, the angle of intersection of such street lines shall be deemed to be the angle formed by the intersection of the tangents to the street lines, drawn through the extremities of the interior lot lines, and the corner of the lot shall be deemed to be that point on the street line nearest to the point of intersection of the said tangents.

**“driveway triangle”** means the triangular shape to be formed where a rear yard abuts a front yard of the adjacent lot. The triangular shape shall be measured as a right angled triangle with 4.5 metre sides along the street line and interior side lot line in the rear yard.

**“effective ground level”** means the mean level of the ground within a radius of 1.25 metres of the fence location being considered.

**“electric fence”** means a fence through which electricity passes.

**“fence or fencing”** means any hedge, free standing wall, structure, partition, or barrier grown, consisting of or constructed of any material or combination of materials, enclosing, partly enclosing or dividing land or being used for decorative purposes.

**“fence of open construction”** means a fence constructed so that at least one third of its vertical surface area is of open space, enabling motorists and pedestrians to have an unobstructed view through the fence.

**“fence of closed construction”** means a fence constructed of solid material, without open spaces, such that views through the fence are substantially obstructed.

**“front lot line”** means the lot line that divides the lot from the street, including a private street but;

- i) in the case of a corner lot the shorter street line shall be deemed to be the front lot line and the longer street line shall be deemed to be a side lot line, but;
- ii) in the case of a corner lot with two (2) street lines of equal length, the lot line that abuts the wider street, shall be deemed to be the front lot line, and in the case of

both streets being under the same jurisdiction, or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line;

- iii) in the case of a through lot, the front lot line shall be deemed to be the street line where the principal access to adjoining lots is provided.

**"front yard"** means a yard extending across the full width of a lot between the front lot line of such lot and the nearest part of any building or structure on such a lot.

**"front setback line"** means the distance required to be maintained from the street line to the nearest part of any existing building or structure on a lot or in the case where there is no building or structure on the lot, the distance required by the Zoning By-law for any building to be constructed.

**"grade level of the street"** shall mean the grade level of the centre of the travelled portion of any street.

**"hedge"** means closely planted row of shrubs, bushes, vegetation, grasses or low trees enclosing, partly enclosing or dividing land or being used for a decorative purpose.

**"lot line"** means any boundary line of a lot.

**"officer"** means a municipal by-law enforcement officer, building inspector, chief building official or any other person appointed or employed by the Town for the enforcement of the by-laws and includes a peace officer.

**"owner"** means a registered owner, but also includes an occupant, lessee, tenant or any other person in charge of or in control of the premises.

**"person"** includes an owner and may be a natural person, firm, corporation, partnership or association.

**"privacy screen"** means a visual barrier used to shield any part of a yard from view from any adjacent property or street.

**"side yard"** means a yard extending from the front yard to the rear yard of a lot and from the side lot line of such lot to the nearest part of any building or structure on such lot.

**"sight triangle"** means the triangular shape formed by street lines of a corner lot where such lot is located at the intersection of two or more streets and the line drawn from a point in one street to a point in the other street, each such point being 4.5 metres from the point of intersection of the streets measured along the said street lines provided that where the two streets do not intersect at a point, the point of the intersection of the street lines shall be deemed to be the intersection of the projected tangents to the street lines drawn through the extremities of the interior lot lines. Such triangular shape may also be called a daylighting triangle.

"street" means a public highway or public road under the jurisdiction of the Town, the Regional Municipality, the Niagara Parks Commission or the Province of Ontario, and includes any highway as defined by the *Municipal Act*, 2001 as amended from time to time

"street line" means a lot line dividing a lot line from a street and is the limit of the street allowance.

"Town" means The Corporation of the Town of Fort Erie.

"vehicle" means a motor vehicle, an automobile, a tractor, a truck, a motorcycle or motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power.

"zone or zoned" means the Zone specified in the Town of Fort Erie Comprehensive Zoning By-law No. 129-90 and amendments thereto or any successors thereto.

### 3.0 Fences

#### 3.1 Fence Heights in Residential, Commercial, Urban Entertainment Centre and Core Mixed Use Zones

3.1.1 Except as otherwise provided in this By-law, no person shall construct or permit to be constructed or maintained any fence of a height greater than 2.3 metres above the effective ground level in any rear and/or side yards from the rear lot line to the front setback line.

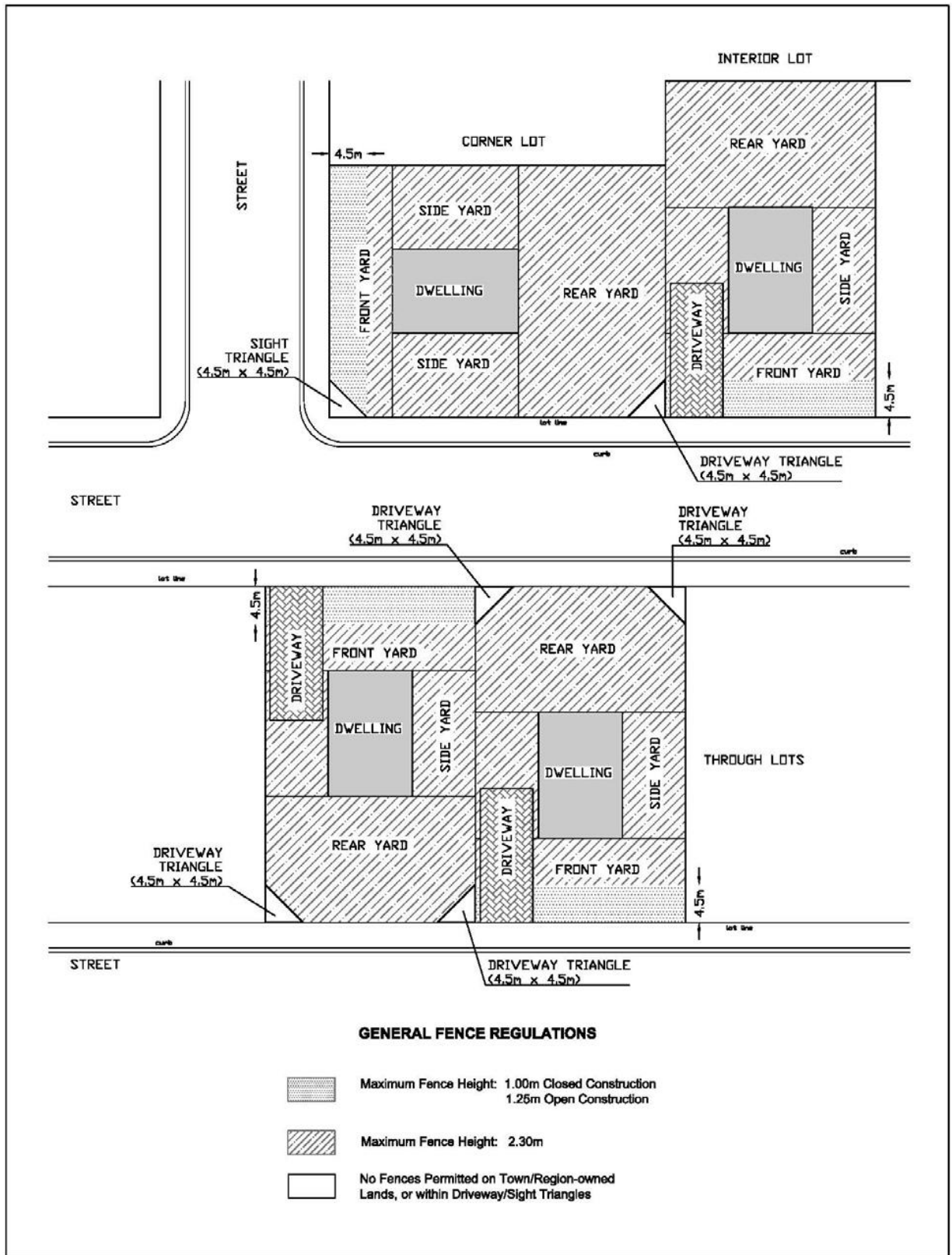
3.1.2 ~~When the rear yard of one property abuts the front yard of an adjoining property, no person shall construct or permit to be constructed or maintained within the driveway triangle:~~

- ~~(i) a fence of closed construction that exceeds 1 metre in height above effective ground level, or~~
- ~~(ii) a fence of open construction that exceeds 1.25 metres in height above effective ground level.~~

3.1.3 **3.1.2** No person shall construct or permit to be constructed or maintained within 4.5 metres of the street line in a front yard:

- ~~(i) a fence of closed construction of a height greater than 1.0 metre above effective ground level; or~~
- ~~(ii) a fence of open construction of a height greater than 1.25 metres above effective ground level.~~

3.1.4 **3.1.3** Where a building or a part of a building in a residential zone is closer to the front lot line than 4.5 metres, this distance shall be known as the front yard setback line and Subsections **3.1.2** (i) and (ii) are applicable from this front yard setback line, as illustrated in the following figure:



- 3.1.5** **3.1.4** No person shall construct or permit to be constructed or maintained a fence within a sight triangle.
- 3.1.6** **3.1.5** No person shall construct or permit to be constructed or maintained a fence within the driveway triangle.
- 3.1.7** **3.1.6** Notwithstanding the requirements of this by-law, the sight/ daylighting triangle provisions of any legislation or regulation of the Region of Niagara, the Niagara Parks Commission and the Province of Ontario shall apply along all Regional Roads, Parks Commission Roads and Provincial Roads.

### **3.2 Fence Heights in Other Zones**

- 3.2.1** No person shall construct or permit to be constructed, any fence exceeding 2.6 metres in height above the effective ground level, around the perimeter of any parcel of land in in any, Industrial, Institutional, Rural, Agricultural or Public Zone.
- 3.2.2** Where an Industrial, Institutional, Rural, Agricultural, or Public or Zone abuts any other zone, the provisions of Section 3.2.1 of this By-law shall prevail.

### **3.3 Fence Heights in Dune Protection, Environmental Protection and Hazard Zones**

- 3.3.1** The regulations for fences applicable to the adjacent zone shall apply to fences in the Dune Protection, Environmental Protection and Hazard Zones. Where two zones are adjacent to the Dune Protection, Environmental Protection or Hazard Zone, the more restrictive regulations shall apply.

### **3.4 Fence Heights along Lake Erie**

- 3.4.1** No person shall construct or permit to be constructed or maintained between the rear of a dwelling and the 1 in 100 year flood elevation of Lake Erie or shore protection works, as approved by the appropriate approval agency unless it is:
- (i) a fence of closed construction of a height greater than 1.0 metre above effective ground level; or
  - (ii) a fence of open construction of a height greater than 1.25 metres above effective ground level.

Notwithstanding the foregoing, privacy screens are permitted in accordance with Section 4.0 of this By-law, between the rear of dwellings and the 1 in 100 year flood elevation as determined by the Appropriate Approval Agency.

- 3.4.2** No person shall construct or permit to be constructed or maintained below the 1 in 100 year flood elevation of Lake Erie or between shore protection works as approved by the Appropriate Approval Agency, any fence, except a temporary fence of open construction with a height less than 1.25 metres above effective ground level, as illustrated in the following figure. For the purposes of this section, "temporary" shall mean not to remain between October 1<sup>st</sup> and April 30<sup>th</sup>.

### 3.5 Barbed Wire Fences

3.5.1 Except as otherwise provided in this By-law, no person shall construct or permit to be constructed or maintained any fence composed wholly or partly of barbed wire, along any street, or on lands located in any zone except any rural or agricultural zone; or in an industrial zone if the fence encloses the property and is a minimum of 2.0 metres in height above effective ground level and does not exceed 2.6 metres above effective ground level.

### 3.6 Restrictions on Fence Materials and Construction

3.6.1 No person shall construct or permit to be constructed or maintained any fence composed wholly or partially used vehicle tires or sheet metal in any zone.

3.6.2 No person shall construct or permit to be constructed or maintained an electric fence, except in an agricultural or rural zone.

3.6.3 No person shall construct or permit to be constructed or maintained a fence containing any sharp material or objects that may be dangerous.

3.6.4 No person shall erect a fence or privacy screen on property owned by the Town or Regional Municipality of Niagara, including any public street, Regional or Town daylighting triangles or on an easement in favour of the Town or Region of Niagara without the express prior written consent of the Town and/or Region of Niagara.

3.6.5 Metal panel fencing is permitted to be used as a fencing material provided it is constructed in compliance with the following provisions:

- (i) be designed of sufficient strength to withstand any applied loads and comply with the remainder of this by-law
- (ii) Be constructed of a uniform colour except nothing shall prevent a single alternate colour for trim material.
- (iii) All exposed edges of the metal panel fencing is to be covered to prevent injury.
- (iv) Be constructed with posts not less than 100mm (4") in size, spaced not more than 2.4m (8'-0") apart.
- (v) Horizontal rails are spaced at least 1.2m (4'-0") apart measured vertically

### 3.7 Fence and Privacy Screen Condition

3.7.1 All fences and privacy screens including posts shall be maintained to a structurally sound condition.

### 4.0 Heights for Privacy Screens

4.1 No person shall construct or permit the construction of a privacy screen in a residential zone unless complying with the following conditions:

- (i) maximum height: 2.5 metres above effective ground level
- (ii) maximum length in any yard: 6 metres
- (iii) maximum combined length: 12 metres
- (iv) minimum setback from a street line: 9 metres
- (v) minimum setback from a side lot line: 1 metre
- (vi) minimum setback from a rear lot line: 1.5 metres.

## 5.0 Fence Height Exemptions

5.1 The provisions of this By-law relating to the height of fences, except the provisions of Section **3.1.3** of this By-law, do not apply to land owned or leased and used by:

- (i) The Corporation of the Town of Fort Erie.
- (ii) Regional Municipality of Niagara.
- (iii) Ontario Hydro and Canadian Niagara Power.
- (iv) Any department or agency of the Federal, or Provincial Government, including the Niagara Parks Commission and the Peace Bridge Authority.
- (v) The District School Board of Niagara.
- (vi) The Niagara Catholic District School Board.
- (vii) Any person for the purpose of temporarily protecting any excavation or construction site.

5.2 The erection of an acoustical barrier shall be exempt from the provisions of this by-law provided it is erected under approval or requirement of an agreement with the Town or as a local improvement.

## 6.0 Administration and Enforcement

6.1 The Chief Building Official, Municipal Law Enforcement Officer or their designate shall enforce the provisions of this By-law and are authorized to enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law is being complied with.

6.2 For the purposes of an inspection under section 6.1 of this By-law, an officer may require the production for inspection of documents or things relevant to the inspection, inspect and remove relevant documents or things for the purpose of making copies or extracts, require information from a person concerning a matter related to the inspection and/or take photographs, samples, measurements necessary for the purposes of the inspection and may also include being accompanied by a person possessing special or expert knowledge.

6.3 Where an owner fails to comply with any provision of this By-law, an Order may be issued to the owner requiring compliance. Every owner shall comply with such an Order. The Order will give particulars of the reasons that the fence does not comply and indicate the time for complying with the Order and giving notice that, if the Order is not complied with within that time, the owner is guilty of an offence and the Town may carry out the Order at the owners expense.

6.4 No person shall fail to comply with an order made under section 6.3

6.5 An Order made under section 6.3 may be served by regular mail if the order is also posted at the property, registered mail or hand delivered to the last known address



of the person to whom it is issued, by email to the last known email address of the person to whom it was issued, or by posting the order at the property where the contravention occurred. An order may be personally delivered or served by Registered Mail. Where an Order is mailed or emailed, the Order shall be deemed delivered on the earlier of receipt of the order by the addressee or the fifth day following the date of mailing, whether actually received or not.

- 6.6 Where an Order has been issued and compliance has not been achieved within the required time period as set out in the Order the Town may, through its employees or agents or persons acting on its behalf, enter upon the land to remove the fence or to take the steps required to effect compliance, and all expenses incurred may be added to the tax roll and collected from the Owner of the property in the same manner as municipal taxes.
- 6.7 No person shall hinder or obstruct an Officer, appointed under this By-law or employed to enforce this By-law, from carrying out an inspection of lands, nor shall any person obstruct any employee or agent authorized to carry out work for the Town specified in an Order issued hereunder.
- 6.8 Every person who contravenes any of the provisions of this By-law is guilty of an offence and, upon conviction is liable to the set fines established under Schedule "A" attached hereto and the penalties as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P.33.

## **6.0 OFFENCES AND PENALTIES**

- 6.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 6.2 Where an officer is satisfied that a person has failed to comply with any provision of this By-law, the enforcement authority may issue a penalty notice imposing an administrative penalty in the amount as established in schedule "A" to this By-law
- 6.3 Administrative Penalty By-law No. 111-2019 applies to each administrative penalty issued pursuant to this by-law.
- 6.4 Every person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty By-law No. 111-2019, be liable to pay to the Town an administrative penalty in accordance with that By-law.

## **7.0 Relief from By-Law**

- 7.1 The Director, Planning and Development Services (the "Director") is delegated authority to refuse or approve applications for minor variances to this by-law.
- 7.2 Any person may request relief from any provision of this By-law from the Director who has been delegated authority to refuse or approve applications for minor variances to this by-law.
- 7.3 The Director is further delegated authority to develop and implement procedures for the administration of applications for minor variances to this by-law.

- 7.4** An application for a minor variance from the provisions of this by-law shall be made to the Director on the prescribed form together with payment of the fee established in the Fees and Charges By-law No. 40-09, as amended or replaced from time to time.
- 7.5** Notice of the application shall be given to the applicant, the owner(s) of the lot and all property owners that abut the subject property and to any applicable agencies or authorities.
- 7.6** The notice referred to in Subsection 7.4 shall identify the subject property, state the date scheduled for the decision, provide a description of the proposed minor variance and information as to how to make representations to the Director prior to his/ her decision.
- 7.7** In the event that the applicant wishes to submit additional information for the consideration of the Director the applicant may request a deferral of the decision by submitting a written request by 4:30 P.M of the day before the date the decision is to be made.
- 7.8** In considering an application for a minor variance, the Director shall have regard for:
- a) special circumstances or conditions applying to the lot, building, or use:
  - b) whether strict application of the provisions of this by-law in the context of the special circumstances applying to the lot, building, or use, would result in practical difficulties or unnecessary and unusual hardship for the applicant of a type and nature inconsistent with the general intent and purpose of this by-law and the Official Plan;
  - c) whether special circumstances or conditions are pre-existing and not created by the owner or applicant;
  - d) whether the fence will alter the essential character of the area in which it is located; and
  - e) comments received.
- 7.9** The Director may authorize a minor variance from the provisions of this by-law, with or without conditions, if, in the opinion of the Director:
- a) the variance is desirable;
  - b) the variance is minor in nature; and
  - c) the general intent and purpose of this by-law is maintained.
- 7.10** The applicant, and any person who made representation to the Director, may appeal the Director's decision to Council by delivering written notice of appeal to the Director on the prescribed form together with the fee established by By-law No. 40-09 within ten (10) days of the date of notice of decision.

- 7.11 In the event the Director does not receive written notice of appeal in accordance with Subsection 7.9, the decision of the Director shall be final.
- 7.12 In the event the Director receives written notice of appeal in accordance with Subsection 7.9, the Director shall submit a report to Council. The applicant and those who received notice of the original application shall be notified in advance of the meeting at which Council will consider the report and shall be given an opportunity to address Council prior to Council's decision. The decision of Council shall be final.

**8.0 General Administration and Interpretation**

- 8.1 The provisions of By-law No. 70-2013 as amended continue to apply to any existing fence in good repair that is in compliance and continues to comply with the requirements of By-law No. 70-2013 on the date of passing of this by-law, until such time as the existing fence is replaced or undergoes substantial repair.
- 8.2 If there is a conflict between a provision of this By-law and a provision of the Swimming Pool By-law No. 149-08, as amended or replaced, the provisions in that By-law shall prevail over the provisions of this By-law to the extent of any conflict.
- 8.3 By-law No. 70-2013 is repealed.
- 8.4 That the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 20<sup>th</sup> day of June, 2016.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Peter Todd , the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 71-2016 of the said Town. Given under my hand and the seal of the said Corporation, this day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

**SCHEDULE "A"**  
**Fence By-law No. xx-xxxx**

**Administrative Penalties**

For the purposes of this By-law:

Column 1 ("Description of Offence") in the table sets out the short form wording to be used in a Penalty Notice for a contravention of the designated provisions listed.

Column 2 ("Section") in the table lists the specific section of the provision that has been contravened.

Column 3 ("Penalty Tier 1") sets out the Administrative Monetary Penalty amounts that are payable for contraventions of the designated provisions listed in Columns 1 and Column 2.

Column 4 ("Penalty Tier 2") sets out the Administrative Monetary Penalty amounts that are payable for a second (2<sup>nd</sup>) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

Column 5 ("Penalty Tier 3") sets out the Administrative Monetary Penalty amounts that are payable for a third (3<sup>rd</sup>) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>	<b>COLUMN 5</b>
<b>Offence</b>	<b>Section</b>	<b>Penalty Tier 1</b>	<b>Penalty Tier 2</b>	<b>Penalty Tier 3</b>
Fail to comply with an Order	6.4	\$250.00	\$350.00	\$450.00
Obstruct or hinder an Officer	6.7	\$250.00	\$350.00	\$450.00

**Town fo Fort Erie By-law No. 71-2016**

**Schedule "A" to By-law No. 71-2016  
Title: To Regulate Fences in the Town of Fort Erie**

<b>ITEM</b>	<b>COLUMN 1</b> Short Form Wording	<b>COLUMN 2</b> Provision creating or defining offence	<b>COLUMN 3</b> Set Fine
1	Fail to comply with an Order	Section 6.2	\$200
2	Obstruct or hinder an Officer	Section 6.6	\$200