

THE MUNICIPALITY OF SOUTHWEST MIDDLESEX

BY-LAW NO. 2015/109

**A by-law governing fences within the urban areas of Southwest Middlesex
(repealing By-law No. 2013/097)**

WHEREAS pursuant to the Municipal Act, S.O., 2001, C. 25, S. 11 a Council may pass a by-law respecting matters within the spheres of jurisdiction regulating structures, including fences;

AND WHEREAS it is deemed expedient and desirable to pass a by-law to regulated the erection and maintenance of fences within the urban areas of Southwest Middlesex:

AND WHEREAS fences within the rural areas and fences around swimming pools are governed by other by-laws of the Municipality of Southwest Middlesex;

NOW THEREFORE the Municipal Council of the Corporation of the Municipality of Southwest Middlesex enacts as follows:

1. DEFINITIONS

a) For the purposes of this by-law, the following definitions shall apply:

“Chief Building Official” means the Chief Building Official for the Corporation of the Municipality of Southwest Middlesex and/or designate;

“By-law Enforcement Officer” shall mean a By-law Enforcement Officer appointed by the Corporation of the Municipality of Southwest Middlesex;

“Council” means the Council of the Municipality of Southwest Middlesex;

“Driveway” means a vehicle access provided between a street and a parking area/space or a loading space;

“Electrical Fence” means a fence through which electricity passes;

“Erect” includes alter, construct, plant, grow, place and relocate;

“Fence” includes a railing, wall, line of posts, wire, masonry, gate, boards or pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, or to establish a property boundary, but does not include a retaining wall;

“Fence – open type construction” means a fence constructed so that its vertical surface area is unobstructed, enabling motorists and pedestrians to have a clear view through such fence (e.g. a fence of chain link construction, wrought iron);

“Fence – solid type construction” means a fence constructed so that its vertical surface is obstructed, preventing motorists and pedestrians from having a clear view through such fence;

“Height” is measured from the ground where the fence posts are embedded or other supporting structures are located to the top of the fence.

“Lot” means any parcel of land which can be occupied or used or otherwise disposed of separately and apart from any abutting lands, whether or not such parcel is described in a registered deed or shown on a registered plan of subdivision;

“Municipality” means the Municipality of Southwest Middlesex;

“Owner” means the person who holds legal title to a piece of property or has an equitable interest in the same;

“Residential Lot” means a lot in a residential zone as identified in the Municipality’s comprehensive zoning by-law and also means a lot in any other zone as identified in the Municipality’s comprehensive zoning by-law where the main use of the lot is currently for residential purposes;

“Sight Triangle” means the portion of a corner lot within the triangular area bounded by the front lot line, the exterior side lot line and a line joining the points along said lines nine (9.0) metres (29.5 feet) distant from the point of intersection of the said lines.

“Street” shall mean a public highway which provides the principal means of vehicular access to abutting lots and includes its sidewalks and boulevards;

“Street Line” means the boundary between a street and a lot separating the lot from the abutting street;

“Urban Area” means those urban centres designated as “Settlement Areas” in the Southwest Middlesex Official Plan, namely Glencoe, Wardsville, Appin, Melbourne, Middlemiss and Pratt Siding.

“Yard” means that part of a lot not covered or occupied by any building;

“Yard, exterior side” means a side yard immediately adjoining a street, extending from a front yard to the rear lot line;

“Yard, front” means a yard that extends across the full width of the lot from the front lot line to the nearest wall of the main building on the lot. Where a lot is a corner lot, for the purposes of this by-law the shortest lot line abutting the street is the front lot line;

“Yard, interior side” means a side yard other than an exterior side yard.

“Yard, rear” means a yard that extends across the full width of the lot from the rear lot line to the nearest wall of the main building on the lot;

“Yard, side” means a yard that extends from the front yard to the rear yard and from the side line of a lot to the nearest wall of the main building on the lot.

“Zoning By-law” means the current comprehensive zoning by-law passed by the Municipality pursuant to the provisions of the *Planning Act*, as may be amended from time to time.

2. GENERAL PROVISIONS

- a) The requirements of this by-law apply to all properties within the Urban Areas of the Municipality of Southwest Middlesex. No permit is required for a fence that complies with the requirements of this by-law.
- b) No provisions of this by-law shall supersede any provisions of the *Line Fences Act, R.S.O. 1990, c.L. 17*.
- c) Fences lawfully erected prior to the passage of this by-law are exempt from the provisions of Section 3 unless in the opinion of the Municipality they constitute a view obstruction or like hazard, in which case Section 3 will apply.
- d) No person shall erect or cause or permit to be erected or maintain a fence unless it is:
 - i) reasonably uniform in colour and pattern;
 - ii) constructed of materials that are specifically designed or commonly used for fencing purposes;
 - iii) non-reflective in nature;
- e) No person shall erect or cause or permit to be erected or maintain any fence that is not:
 - i) in good repair; and
 - ii) sufficiently sturdy so as not to present a hazard through risk of toppling or collapse or through risk of portions coming loose that could become a hazard.
- f) Notwithstanding any of the regulations set out in this by-law, no person shall erect, construct or permit to be erected or constructed a fence that, in the opinion of the By-Law Enforcement Officer:
 - i) obstructs pedestrian or vehicular traffic; or
 - ii) obscures clear visibility of normal approaching pedestrian or vehicular traffic
- g) No person shall attach or cause or permit the attachment of any sign or other advertising device to a fence of open type construction.

- h) All fences constructed on what is, or is planned to be, a temporary basis shall comply with all relevant provisions of this By-law.

3. RESIDENTIAL FENCES

- a) No person shall erect, cause or permit to be erected a fence on a Residential Lot except in accordance with Sections 3b) through 3e) inclusive.
- b) A fence within a Front Yard shall not exceed a height of 0.91 metres (3 feet) measured from the ground level if a solid type construction or a maximum height of 1.8 metres (6 feet) measured from the ground level if of open type construction
- c) A fence within a Sight Triangle shall not exceed a height of 1 metre (3.2 feet) measured from the ground.
- d) A fence within any rear yard or side yard shall not exceed a height of 1.8 metres (6 feet) measured from the ground level with the exception of a boundary fence between a Residential Lot in a commercial zone where the abutting property is being used for a commercial purpose, in which case Section 4 may apply.
- e) Despite Section 3b), where a front yard abuts a rear yard of an adjacent corner lot, a fence not exceeding a height of 1.8 metres (6 feet) may be erected along that portion of the lot line between said Lots, having regard to the site triangle requirements of Section 3c).

4. NON-RESIDENTIAL FENCES

- a) No person shall erect, cause or permit to be erected a fence on a Lot in any zone as defined in the Zoning By-law, with the exception of a Residential Lot, except in accordance with Sections 4b) through 4e) inclusive.
- b) A fence within any yard shall not exceed a height of 3 metres (9.8 feet).
- c) A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6 metres (15 feet).
- d) A fence within a Sight Triangle shall not exceed a height of 1 metre (3.2 feet) measured from the ground level.
- e) A fence within any yard that abuts a residential Lot shall not exceed a height of 1.8 metres (6 feet) unless otherwise considered necessary by the Municipality and provided for in a site plan agreement as per Clause 9(b) of this By-law.

5. FENCES WITH BARBED WIRE OR OTHER BARBED MATERIAL

- a) No person shall erect or cause to be erected on any Lot used for residential or commercial purposes as identified in the Zoning By-law, a fence which either contains, or is constructed of, barbed wire or other barbed or sharp material.
- b) Barbed wire or other barbed or sharp material may be used on the top and to the outside of fences that are erected on a Lot which meet all the following criteria:
 - i) the Lot is zoned Industrial in the Zoning By-law;
 - ii) the barbed wire is located not less than 1.52 metres (5 feet) above ground level;
 - iii) the outward projection of the barbed wire does not project onto a neighboring property.

6. ELECTRICAL FENCES

- a) Except as provided in Subsection (b) of this Section, no person shall erect or cause to be erected an electrical fence on any Lot in the Urban Areas.
- b) An electrical fence using direct current may be erected on land in the Urban Areas while it is being lawfully used for agricultural purposes on the condition that any person erecting an electric fence for the purpose allowed under this section shall comply with the following.
 - i) The fence shall have a controller which meets CSA (Canadian Standards Association) Standard C22.2 No.103-M92.
 - ii) The fence is designed and erected solely to contain livestock as defined in the Southwest Middlesex comprehensive zoning by-law; and
 - iii) The fence has attached to it, at approximately 15 metre (49.2 feet) intervals, a sign stating that the fence carries electricity.

7. GENERAL

- a) In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the feminine gender shall include the masculine and, further, the converse of the foregoing also applies where the context so requires.
- b) Notwithstanding any other provision in this By-law, a fence, which is required and approved as a condition of a site plan agreement for the development or redevelopment of land, shall be deemed to be in conformity with the provisions of this by-law.
- c) Any person may apply to the Committee of Adjustment for a minor variance from the requirements of this by-law. The Committee may grant a minor variance if, in its opinion, the general intent and purpose of the Fence By-law are maintained or if the Committee is

satisfied, after allowing input from the applicant and property owners within 60 metres (200 feet), that the variance is appropriate. The Committee may attach terms and conditions to the minor variance. A minor variance shall be invalid if the terms and conditions are contravened.

8. ADMINISTRATION AND ENFORCEMENT

- a) In the event that the Municipality receives complaints regarding a fence, the Bylaw Enforcement Officer shall inspect such fence. If, in the opinion of the Bylaw Enforcement Officer, the fence does not meet provisions of the by-law, the By-law Enforcement Officer shall require, in writing, the owner, agent or person responsible for the fence to comply with the provisions of this by-law. Failure to comply shall be considered a contravention of the by-law which is subject to the penalty set out in Section 11 of this by-law.

Notice in writing is deemed delivered when it has been:

- i) personally served; or
- ii) sent by regular mail to the address of the owner, as shown on the last revised assessment roll, on the seventh day after mailing; and/or
- iii) when posted on the offending fence.

9. PENALTY

Any person who contravenes a provision of this By-law is guilty of an offence and is liable, upon conviction, to the maximum penalty as prescribed by the *Provincial Offences Act*, as amended or revised from time to time, and as set out in Schedule "A" attached hereto. All such fines shall be recovered under the *Provincial Offences Act*.

Schedule "A" being the Set Fine Schedule and attached hereto shall constitute part of this By-law.

10. SEVERABILITY

If a court of competent jurisdiction declares any section or subsection of this bylaw invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.


11. TITLE

This By-law shall be referred to as the "Urban Fence By-law".


12. FORCE and EFFECT

1. This by-law hereby repeals By-law No. 2013/097, as amended;
2. This by-law comes into force and effect on the date of passing thereof.

Read a first and second time this 16th day of December, 2015.




Mayor



Administrator/Clerk

Read a third time and finally adopted this 16th day of December, 2015.



Mayor



Administrator/Clerk

MUNICIPALITY OF SOUTHWEST MIDDLESEX

PART 1 – Provincial Offences Act

BY-LAW NO. 2015/109

Regulation of Fences within the Urban Areas of Southwest Middlesex By-law

SCHEDULE 'A' - Page 1 of 1

Short Form Wording and Set Fines

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Erect a fence of restricted colour, pattern and/or materials	Section 2 (d)	\$150.00
2.	Failure to erect or maintain a fence that is sturdy and in good repair.	Section 2 (e)	\$150.00
3.	Erect a fence that obstructs pedestrian or vehicular traffic	Section 2 (f) (i)	\$150.00
4.	Erect a fence that obscures clear visibility of pedestrian or vehicular traffic.	Section 2 (f) (ii)	\$150.00
5.	Attach an advertising device to a fence of open type construction	Section 2 (g)	\$150.00
6.	Erect a residential fence in excess of height restrictions	Section 3	\$150.00
7.	Erect a non-residential fence in excess of height restrictions	Section 4	\$150.00
8.	Erect a fence with barbed material	Section 5 (a)	\$150.00
9.	Erect an electric fence	Section 6 (a)	\$250.00
10.	Erect a non-compliant electric fence	Section 6 (b)	\$250.00

NOTE:

The general penalty provision for the offences listed above is Section 9 of By-law No. 2015/109, as amended, a certified copy of which has been filed.