

THE CORPORATION OF THE MUNICIPALITY OF SHUNIAH



BY-LAW NO. 3329-23

Being a by-law for regulating and governing fences in the Municipality of Shuniah.

Recitals

- a) Section 7, Subsection 11(3) of the the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that the Council of a municipality may enact a by-law respecting structures including fences;
- b) The Council of the Municipality of Shuniah deems it necessary to prescribe limitations on fence height, location and materials, as well as require the erection of swimming pool enclosures that meet minimum safety standards;
- c) The Municipal Act, 2001, S.O. c. 25, as amended, provides that a municipality may provide that the Line Fences Act does not apply to all or any part of the municipality; and
- d) Council deems it expedient to exclude the Municipality of Shuniah from the provisions of the Line Fences Act RSO 1990.

THEREFORE, THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF SHUNIAH ENACTS AS FOLLOWS:

1. DEFINITIONS: In this by-law:

- 1.1. **“Clerk”** means the Clerk for the Municipality of Shuniah or a designate.
- 1.2. **“Council”** means the Council of the Corporation of Municipality of Shuniah.
- 1.3. **“Enclosure”** means a wall or structure including doors or gates surrounding a privately owned outdoor swimming pool.
- 1.4. **“Fence”** shall mean any material or combination of materials acting as a continuous barrier, but is not limited to a railing, wall line of posts, wire gate boards, pickets or any material or combination of materials or other similar substances used to enclose or divide in whole or in part a yard or other land to establish or delineate a property boundary or to establish or delineate an area in order to provide privacy and includes any hedge or grouping of shrubs or trees used for the same purpose and such hedges, shrubs or trees are planted in pots or the ground in a fashion as to create a visual screen.
- 1.5. **“Height”** means the distance measured from the effective natural ground level or the approved lot grade where the fence posts are embedded to the top of the said posts including but not limited to all fence materials, finials lattice, brackets; and in the instance of a fence or enclosure being erected, growing or maintained to where the land levels are not the same on both sides of the fence or enclosure, including the land directly parallel to the fence the "LEVEL OF LAND" shall be deemed to be the lower of such levels.
- 1.6. **“Highway”** shall mean and include any common or public highway, road, concession, street, avenue, lane, parkway, driveway, square or place, bridge, viaduct, opened or unopened road allowance, or trestle designed and intended for or used by the general public for the passage of vehicles or people.
- 1.7. **“Livestock”** shall mean animals kept or raised for use or profit.

- 1.8. **"Municipality"** means the Corporation of the Municipality of Shuniah.
- 1.9. **"Obnoxious"** shall mean and include offensive and objectionable.
- 1.10. **"Officer"** means a Municipal Law Enforcement Officer, a Police Officer, Chief Fire Official or any person designated by Council as responsible for the administration of this By-law from time to time.
- 1.11. **"Owner"** means any person, firm or corporation having control over any portion of the building or property under consideration and includes the persons in the building or property.
- 1.12. **"Poultry"** shall mean domesticated birds kept for eggs or meat.
- 1.13. **"Shoreline"** shall mean the physical high water mark made by a water body or by a water course, and shall include beached, exposed rock, and other features that are a part of a beach environment. Where the water's edge displays no such highwater marks, the water's edge shall be the shoreline.
- 1.14. **"State"** shall mean and include any condition, style or position.
- 1.15. **"Swimming Pool"** shall mean and include any body of water used for swimming or wading contained in part or in whole by artificial means, constructed above or below the grade level of the surrounding land and having a depth of more than 61 cm at any given point.
- 1.16. **"Vehicle"** shall mean a motor vehicle, trailer, traction engine, farm tractor, and any vehicle drawn, propelled or driven by any kind of power including muscular power.
- 1.17. **"Wind Protection Fence"** shall mean a fence comprised of metal or wooden posts set at least 1.5 meters apart and those sections between are comprised of fully clear and see through material such as glass or plexi-glass or other materials as not to cause a visual barrier. The intended use is to protect a patio or deck from the prevailing winds and shall not form part of a property boundary fence.

2. FENCES – GENERAL REGULATIONS

2.1. Prohibited

- a) No person shall erect construct maintain or permit to be erected constructed or maintained any fence that does not comply with the provisions of this by-law.

2.2. Contravention of Order

- a) No person shall contravene a Work Order or an Order to Discontinue Activity.

2.3. Hinder or Obstruct

- a) No person shall hinder or obstruct or attempt to hinder or obstruct any person who is exercising a power or performing a duty including carrying out an inspection.

2.4. Fences – Deemed to Comply

- a) Notwithstanding the provisions of this by-law, any fence legally constructed and that is in existence prior to the date of the enactment of this by-law and in compliance with other applicable regulation shall be deemed to comply with this by-law and may be maintained with the same material height and dimensions as previously existed including any repair work that may be done to such fence.

3. RESIDENTIAL FENCES

- 3.1. The provisions of this part shall apply to all lands within the Municipality and lands that abut the shoreline of any navigable lake or river.
- 3.2. Every fence erected shall be constructed in a proper and workman like manner of good sound material or materials and shall be maintained in a good state of repair and in a firm, stable and safe condition.
- 3.3. No person either being the occupant or owner of land shall erect, grow or maintain or cause or permit to be erected, grown or maintained any fence composed wholly or partly of:
 - a) Sheet metal, corrugated metal, barbed wire, barbed material or any other material of a nature which could be injurious or inherently dangerous to the public or;
 - b) Any device designed for or capable of projecting electric current through a fence.
- 3.4. No person under this part either being the occupant or owner of land shall erect, grow, maintain or cause or permit to be erected, grown or maintained on the land of a fence more than 2.5 metres in height.
- 3.5. No person shall construct a fence within any portions of the required front yard in which the lands abut a shoreline of any navigable lake, waterway or river.
- 3.6. Notwithstanding Section 3.5 a person may construct a "wind protection fence" in any required front yard within the Municipality providing that it not be constructed within the shoreline road allowance or comprise any part of a property boundary fence.
 - a) No person shall construct a "wind protection fence" that exceeds 2 metres in height and be constructed in a manner as not to create a visual barrier and shall be comprised of metal or wooden posts set at least 1.5 meters apart and those sections between are comprised of fully clear and see through material such as glass or plexi-glass or other clear and see through materials.
- 3.7. No person shall locate or construct a fence so as to block access to a parking space.
- 3.8. No person shall locate or construct a fence so as to cause impaired sight for egress or ingress either to the land owner or travelling public for travel or use of any highway or roadway the setback of which shall be 3 metres from the rear lot line or lot lines which are used for egress or ingress.
- 3.9. No person shall locate or construct a fence within 3 metres of the edge of the traveled portion of any highway or roadway.

4. SWIMMING POOL ENCLOSURES

- 4.1. The Owner of each privately owned outdoor swimming pool as defined in Subsection 1.17 above shall erect and maintain a fence around each such swimming pool.
- 4.2. Any fence required to be provided and maintained under Subsection 4.1 of this section may include:
- a) One or more gates which are erected and maintained in accordance with this by-law;
 - b) Any part of a wall of a building if the part used as part of the fence exceeds 1.5 metres in height.
- 4.3. Every fence required to be erected and maintained in accordance with Subsection 4.1 shall be:
- a) Not less than 1.2 metres in height above grade;
 - b) constructed so that any fence post or other structural member of the fence to which any wire, boards or other materials are attached, is on the pool side of such wire, boards or other material, provided that Subsection 4.1 shall not apply to any fence used in common by abutting owners to separate pools situate upon their respective properties;
 - c) constructed so that it has no openings, rails or horizontal or diagonal attachments on the outside which would facilitate climbing;
 - d) constructed so that only means of ingress to or egress from the area enclosed by the fence shall be through doors or gates constructed in accordance with section 4 of this by-law;
- 4.4. Where constructed of chain link:
- a) Not less than 12 gauge with diamond mesh not larger than 50 mm in the case of fences having a height of not less than 1.8 metres and not larger than 38 mm in the case of fences having a height of less than 1.8 metres;
 - b) supported by metal posts set in concrete and spaced not more than 3 metres apart,
 - c) have (throughout its length), a taut wire interwoven through the bottom links to prevent the bottom portion of the fence from being raised;
 - d) be constructed so that the distance between the ground and the bottom of the fence does not exceed 10 cm
- 4.5. Where constructed of wood the boards be placed:
- a) vertically not spaced more than 38 mm between boards;
 - b) located not less than 1.2 metres from the edge of the pool;
 - c) Be constructed so that the distance between the ground and the bottom of the fence does not exceed 10 cm.

- 4.6. Every gate included in a fence required by this by-law shall be:
- a) constructed in accordance with the provisions of this by-law; and
 - b) equipped with self-closing and self-latching devices so that when not in use, the gate is at all times closed and latched. Such latching device shall be located at the top of the gate on the poolside.
- 4.7. Notwithstanding the provisions of Section 4 hereof, in the case of a pool constructed entirely above grade and so constructed that it has no openings, rails or horizontal or diagonal attachments on the outside which would facilitate climbing, only the steps to such pool are required to be fenced and equipped with a gate as hereinbefore provided. The fencing around such steps and the gate shall in all respects comply with the provisions of the by-law.
- 4.8. Prior to the construction of fences and gates as required hereby, the owner of the swimming pool shall produce and deposit with the Building Inspector, or his delegate, plans showing all fences and gates proposed to be constructed, such plans to show the location of such fences and gates and their manner of construction in sufficient detail to permit the Building Inspector, or his delegate, to ascertain whether or not the proposed fences and gates will comply with the provisions of this by-law.
- 4.9. In the event that the proposed fences and gates comply with the provisions of this by-law, the Building Inspector, or his delegate, shall, issue a permit in the form set forth in Schedule "A" hereof certifying that he has approved such plans.
- 4.10. No privately owned outdoor swimming pool may be excavated for or erected without a permit.
- 4.11. No person shall place water in a privately owned outdoor swimming pool or allow water to remain therein unless the fences and gates prescribed hereby have been approved and erected.
- 4.12. The Building Inspector, or his delegate, is authorized to refuse to issue a permit for any such fence or gate which, if erected, would be contrary to the provisions of any by-law of this Municipality.
- 4.13. This by-law shall apply to every privately owned swimming pool as defined in Subsection 1.17 of this by-law, constructed after the passing of this by-law.

5. AGRICULTURAL, COMMERCIAL AND INDUSTRIAL FENCES

- 5.1. The Provisions of Section 5 shall apply only to the lands within the Municipality of Shuniah which are zoned and are being used for agricultural, commercial or industrial uses.
- 5.2. Every fence erected shall be constructed in a proper and workman like manner of good sound material or materials and shall be maintained in a good state of repair and in a firm, stable and safe condition.
- 5.3. Under this section no person under this part either being 'the occupier or owner of land shall erect, grow, maintain or cause or permit to be erected, grown or maintained on the land of a fence more than 3 metres in height.
- 5.4. A fence under this part may be constructed of barbed wire on lands zoned and used for agricultural purposes but a fence under this part on lands zoned and

used for industrial or commercial purposes may be comprised in part with barbed wire but such a fence shall only consist to a maximum of 3 strands of barbed wire which shall be used on the top at a minimum height of barbed wire from ground level of 2.5 metres.

- 5.5. A fence under this part may be electrified on lands zoned and used for agricultural purposes but any electrified fence abutting a highway or a residence shall be clearly marked as such.
- 5.6. All occupiers or owners of land for agricultural purposes shall erect and maintain a fence upon land which they keep or maintain any livestock or poultry including horse(s), cattle, sheep, swine, geese or poultry and every fence shall be of sufficient height and strength to prevent the escape from that land of any such animal or poultry kept thereon unless such livestock or poultry are otherwise effectively restrained from leaving said land.
- 5.7. No Where any livestock or poultry including horse(s), cattle, sheep, swine, geese or poultry escape from any land, such escape shall be deemed prima facie evidence of the insufficiency of such fence or of such other means of restraint employed, and the burden of proving the sufficiency of such fences or means of restraint shall be upon the occupant or owner of such land; and further the occupant or owner of such land shall prima facie be deemed the owner of such livestock or poultry.

6. GENERAL ADMINISTRATION

- 6.1. No person shall erect or maintain a fence or enclosure either permanently or temporarily on any highway or property owned or administered by the Corporation of the Municipality of Shuniah without in the first instance obtaining in writing the prior approval of council thereto, unless otherwise excepted under another Act or by a judicial order.
- 6.2. No person shall erect or maintain any fence or enclosure which may obstruct the 180 degree view of any driver of a vehicle approaching a highway intersection of other vehicle(s), traffic, or pedestrians converging upon that intersection.
- 6.3. None of the provisions of this by-law relating to the height of fences shall apply to land owned, leased or administered by:
 - a) The Corporation of the Municipality of Shuniah;
 - b) Any local board as defined in the Municipal Affairs Act;
 - c) Any telephone, telegraph or gas company;
 - d) Any department of the federal or provincial government including the Hydro Electric Power Commission of Ontario;
 - e) Any person who by way of any judgement, order, direction or decision made or given by any court or other duly constituted authority having jurisdiction;
 - f) Any person who erects and maintains a fence for the purpose of surrounding a tennis court which shall be permitted to a maximum height of 3 metres;
 - g) Any person approved by the Council of the Municipality of Shuniah to conduct a salvage yard, scrap yard, pit or quarry.
- 6.4. No person shall post, place, exhibit, write, draw, or make or permit or cause to post, place, exhibit, write, draw or make on any fence or enclosure any drawings, pictures or writing of words which may be indecent or may corrupt or demoralize any person.
- 6.5. No person shall erect or maintain any fence or enclosure in an obnoxious state.

- 6.6. No person shall erect a fence or cause a fence to be erected unless the fence is constructed and finished in such a manner so as to present the finished side thereof, toward the public street and/or the neighbouring properties.
- 6.7. Every person either being the occupant or owner of land upon notification of a contravention of this by-law shall immediately remove such contravention.
- 6.8. If any provisions of this by-law are for any reason held to be invalid, it is hereby declared to be the intention that all remaining provisions shall remain in full force and effect until repealed, notwithstanding that one or more provisions shall have been declared to be invalid.

7. PENALTIES

- 7.1. Every person who contravenes or fails to comply with the sections herein has committed an offence and upon conviction may be liable to a fine provided for in Schedule "B" to this By-law or s. 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33.
- 7.2. If any section, subsection, paragraph, sentence, clause, or provision of this By-law be declared by a Court of competent jurisdiction to be invalid, illegal or ultra vires for any other reason, all other provisions of this By-law shall remain and continue in full force and effect and shall remain valid and binding.

8. ADMINISTRATION AND ENFORCEMENT

- 8.1. An Officer is hereby vested with the authority of enforcing the provisions of this by-law.
- 8.2. An Officer may, at any reasonable time, enter any property for the purpose of carrying out an inspection to determine whether or not the provisions of this bylaw have been complied with.
- 8.3. No person shall prevent, hinder or interfere or attempt to prevent, hinder or interfere with an inspection undertaken by an officer.

9. VALIDITY AND SEVERABILITY

- 9.1. Every provision of this by-law is declared to be severable from the remainder and if any provision of this by-law shall be declared invalid by a court of competent jurisdiction such declaration shall not affect the validity of the remainder.

10. SHORT TITLE

- 10.1. This by-law may be cited as the "Fence By-law"

11. REPEAL

- 11.1. By-law Number 2840-15 is hereby repealed.

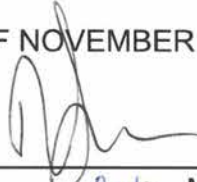
12. ENACTMENT

This By-law shall come into for and take effect on:

- 12.1. Permits issued in accordance with section 4 of this by-law shall be in the form as set out in Schedule "A" attached hereto and forming part of this by-law;

- 12.2. Schedule "B" of this By-law being forwarded to and approved by the Senior Regional Justice of Ontario Court of Justice; and
- 12.3. That this By-law shall come into force and take effect upon the final passing thereof.

READ A FIRST AND SECOND TIME THIS 28th DAY OF NOVEMBER 2023




Acting Mayor



Clerk

READ A THIRD TIME AND FINALLY PASSED THIS 28th DAY OF NOVEMBER 2023



Acting Mayor



Clerk

OFFICE OF THE REGIONAL SENIOR
JUSTICE
ONTARIO COURT OF JUSTICE
NORTHWEST REGION

125 Brodie Street, North
6th Floor
Thunder Bay, Ontario P7C 0A3



CABINET DU JUGE PRINCIPALE RÉGIONALE
COUR DE JUSTICE DE L'ONTARIO
RÉGION DU NORD-OUEST
125, rue Brodie, Nord
6^{ème} étage
Thunder Bay (Ontario) P7C 0A3

TELEPHONE/TÉLÉPHONE (807)626-7048

March 27, 2024, 2024

Kerry Bellamy, Clerk
On behalf of the Municipality of Shuniah
420 Leslie Avenue
Thunder Bay, Ontario P7A 1X8

Dear Ms. Bellamy;

**Re: Municipality of Shuniah, District of Thunder Bay
Part 1, Provincial Offences Ave, By-law No. 3329-23**

Enclosed herewith is an original Order and an original schedule of set fines for By-law No. 3329-23, the By-law indicated in the schedule. Please ensure that a copy of the said documents is forwarded to the Provincial Offences Office, which has jurisdiction for the Municipality of Shuniah.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

I have forwarded the copy of the Order and the schedules of these set fines to the Ontario Court of Justice in Thunder Bay, together with a certified copy of the By-Law.

Yours truly,

A handwritten signature in blue ink, appearing to read 'David Gibson'.

DAVID GIBSON
REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE

DG/km

Encl.

c.c.: His Worship Bernard Caron, Regional Senior Justice of the Peace
Her Worship Danette Ellard, Local Administrative Justice of the Peace

OFFICE OF THE REGIONAL SENIOR
JUSTICE
ONTARIO COURT OF JUSTICE
NORTHWEST REGION

125 Brodie Street, North
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Thunder Bay, Ontario P7C 0A3



CABINET DU JUGE PRINCIPALE RÉGIONALE
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March 27, 2024

Ms. Melissa Adams, Crown Counsel
Crown Law Office, Criminal
720 Bay Street, 10th floor
Toronto, Ontario
M5G 2S9

Dear Ms. Adams:

Re: Municipality of Shuniah, District of Thunder Bay
Part 1, Provincial Offences Ave, By-law No. 3329-23

Please find enclosed a copy of an Order dated February 20, 2024, and a copy of a letter to Kerry Bellamy, Clerk on behalf of the Municipality of Shuniah.

Should you have any questions, please do not hesitate to contact me at (807)626-7048

Yours truly,

A handwritten signature in blue ink, appearing to read 'David Gibson'.

DAVID GIBSON
REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE

DG/km

Encl.

OFFICE OF THE REGIONAL SENIOR
JUSTICE
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PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-Law No. 3329-23, of Municipality of Shuniah, Thunder Bay District, attached hereto is the set fine for that offence. This Order is to take effect March 27th, 2024.

Dated at the City of Thunder Bay, this 27th day of March 2024.

A handwritten signature in blue ink, appearing to read 'David Gibson'.

DAVID GIBSON
REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE

Municipality of Shuniah
By-law #3329-23 Regulating and Governing of Fences
Part 1 Provincial Offences Act

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set Fine
1	Contravene work order or order to discontinue activity	Section 2.2	\$250.00
2	Hinder or obstruct person exercising power or performing an inspection	Section 2.3	\$250.00
3	Improperly construct or maintain a fence	Section 3.2	\$250.00
4	Erect/maintain or cause to erect/maintain a fence made from prohibited materials.	Section 3.3	\$250.00
5	Causing to erect, maintain or permit a fence exceeding 2.5 metres in height.	Section 3.4	\$250.00
6	Constructing a fence within front yard on lands abutting a shoreline.	Section 3.5	\$250.00
7	Construct a wind protection fence exceeding 2 metres in height.	Section 3.6	\$250.00
8	Construct a wind protection fence that creates a visual barrier.	Section 3.6	\$250.00
9	Construct a fence that blocks access to parking.	Section 3.7	\$250.00
10	Construct a fence causing impaired sight for egress or ingress.	Section 3.8	\$250.00
11	Construct a fence within 3 metres of the edge of the traveled portion of any highway or roadway.	Section 3.9	\$250.00
12	Causing to erect, maintain or permit a fence exceeding 3 metres in height.	Section 5.3	\$250.00
13	Fail to erect sufficient fence to prevent the escape of livestock.	Section 5.6	\$250.00



14	Post/place/exhibit/write/draw or permit/cause and drawings/pictures/words on fence which may be indecent or may corrupt or demoralize any person	Section 6.4	\$250.00
15	Fail to present the finished side of fence toward public road/ neighbouring properties.	Section 6.6	\$250.00

Note: The penalty provision for the offences indicated above is section 7.1 of By-law #3329-23, a certified copy of which has been filed.



