



Newmarket

# Corporation of the Town of Newmarket

## By-law 2019-20

A By-law to prescribe the Height and Description of Fences and Privacy Screens within the Town of Newmarket.

Whereas section 11 (3) 7 of the **Municipal Act**, 2001, S.O. 2001, c.25, as amended (the "Act") provides that a lower-tier municipality may pass by-laws respecting structures, including **Fences** and signs; and,

Whereas Subsection 98(1) and (2) of the **Municipal Act**, 2001 provides that a Bylaw may be passed by a municipality stating that the **Line Fence Act**, R.S.O., Ch. L. 17 ("**Line Fence Act**") does not apply to all or part of municipality, subject to the continuing applicability of Section 20 of the Line Fence Act; and,

Whereas section 26 of the **Line Fences Act** states that the **Line Fences Act**, except section 20, 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 Act; and,

Therefore be it enacted by the **Council** of the Corporation of the **Town** of Newmarket as follows:

### 1.0 Definitions

Note: Defined terms in this By-law are in bold and the first letter has been capitalized.

In this By-law

**"Accessory Outdoor Storage"** means the incidental storage of equipment, goods, or materials that are directly related to the lot, outside of any building or structure.

**"Appeal Committee"** means the **Appeal Committee** established by the **Town**.

**"Building"** means any **Building** of structure that is designed or constructed to be used as the principal or main **Building** on a lot and does not include accessory structures or **Buildings**.

**"Council"** means the elected **Council** of the Corporation of the **Town** of Newmarket.

**"Corner Lot"** means a lot situated at the intersection of and abutting onto two or more streets or two sections of the same street, provided that the angle of intersection of such street(s) is not more than one hundred and thirty-five degrees (135°).

**"Daylighting Triangle"** means the area within a triangle formed by measuring a prescribed distance along two specified intersecting lines and a third line joining the terminal points of the two measured lines.

**“Deck”** means a platform, with no solid roof or walls, which is constructed on piers or a foundation above finished **Grade** adjacent to a ground floor or walkout basement wall, is used as an outdoor living area.

**“Director”** means the Director, Legislative Services/ Town Clerk of the **Town** and his/her designate.

**“Division Fence”** means a **Fence, Hedge** or combination thereof used to define a property **Lot Line**.

**“Fees and Charges By-law”** means the General **Fees and Charges By-law**, as amended for the Legislative Services Department.

**“Fence”** means any structure constructed of building materials designed for exterior use including but not limited to posts, boards, panels, pickets, pilings, wood, fiberglass, plastics, metal, lattice, rails, wire, chain link, masonry or similar materials or any combination thereof which delineates any **Yard** or outdoor area but does not include trellis or arbour.

**“Grade”** means the level of the ground adjacent to the outside wall of a **Building** or structure.

**“Hedge”** means a continuous line or shrubs or other plant material closely growing bushes, trees, shrubs or other plantings used to define a property **Lot Line**, but shall not include closely growing bushes, trees, shrubs or other plantings on the interior side of a **Fence**.

**“Height”** means the total **Height** at any point along a **Fence, Hedge, Division Fence** or **Privacy Screen** measured from the highest level of **Grade** on either side of the **Fence** or **Privacy Screen** at any point along the **Fence** or **Privacy Screen** from a point that is less than 0.6 metres (2 feet) from the **Fence** or **Privacy Screen** and includes the posts, rails and any decorative “lattice” or similar form of capping. In the case of a **Fence, Division Fence** or **Privacy Screen** located on top of a retaining wall, **Height** shall mean the vertical distance between the top of the retaining wall and the highest point of the **Fence** or **Privacy Screen**.

**“Height”** means the vertical distance measured between the finished **Grade** and the highest point of a **Fence, Hedge, Division Fence** or **Privacy Screen** or any part thereof, directly above; in the case of a **Fence, Hedge, Division Fence** or **Privacy Screen** located on top of a retaining wall, **Height** shall mean the vertical distance between the top of the retaining wall and the highest point of the **Fence, Hedge, Division Fence**, or **Privacy Screen** directly above.

**“Line Fences Act”** means **Line Fences Act**, R.S.O. 1990, c. L.17, as amended, from time to time.

**“Lot Line”** means a boundary of a lot including its vertical projection.

**“Lot Line, Exterior Side”** means a side **Lot Line** which abuts the street on a **Corner Lot**.

**“Lot Line, Front”** means:

(a) In the case of an interior lot, shall be the **Lot Line** abutting a street.

(b) In the case of a **Corner Lot**, shall be the shorter **Lot Line** that abuts a street.

(c) In the case of a **Corner Lot** with two **Street Lines** of equal length, shall be the **Lot Line** which abuts a Regional Road. In the case that both abutting streets are under the same jurisdiction or are of the same width, the Municipality may designate either **Street Line** as the front **Lot Line**.

(d) In the case of a **Corner Lot** abutting a 0.3 metre reserve, shall be the **Lot Line** which does not abut the 0.3 metre reserve.

(e) In the case of a through lot, shall be the longer boundary dividing the lot from the street. In the case that both such **Lot Lines** shall be of equal length, the Municipality may designate either **Street Line** as the front **Lot Line**.

**“Lot Line, Rear”** means the **Lot Line** or intersection of the side **Lot Lines**, opposite to, and most distant from, the front **Lot Line**.

**“Lot Line, Side”** means a **Lot Line**, other than a front or rear **Lot Line**. In the case of a **Corner Lot**, the **Lot Line** that abuts a street shall be identified as the **Exterior Side Lot Line**.

**“Municipal Act”** means **Municipal Act**, 2001,c.25, as amended, from time to time.

**“Municipal Law Enforcement Officer”** means a **Person** appointed by Council as a **Municipal Law Enforcement Officer** and shall also include an officer of the York Regional Police Service.

**“Non-residential Property”** means land used for other than residential purposes and includes land used for both residential and other purposes.

**“Owner”** means the registered **Owner**, lessee, tenant, mortgagee in possession and/or the **Person** in charge of any property.

**“Person”** means an individual, business, firm, body corporate, corporation, association, or municipality.

**“Privacy Screen”** means a visual barrier constructed of building materials designed for exterior use including but not limited to posts, boards, panels, pilings, lattice, rails, wire, chain link, masonry or similar materials or any combination thereof used to shield any part of a **Yard** from view from any adjacent lot or highway.

**“Residential Property”** means land used for residential purposes.

**“Street Line”** means the boundary between a public or private street and a lot.

**“Town”** means Corporation of the **Town** of Newmarket.

**“Water Gate”** means a gate, or valve, by which a flow of water is permitted, prevented, or regulated.

**“Yard”** means an open, uncovered space on a lot re to a **Building** and unoccupied by **Buildings** or structures except as may be expressly permitted by this By-Law but does not include a court yard. In determining **Yard** measurements the minimum horizontal distance from the respective **Lot Line(s)** shall be used.

**“Yard, Exterior Side”** means the **Yard** of a **Corner Lot** extending from the **Front Yard** to the **Rear Yard** between the **Exterior Side Lot Line** and the nearest main wall of the principal **Building** or structure on the lot.

“**Yard, Front**” means a **Yard** extending across the full width of a lot between the front **Lot Line** and the nearest wall of the principal **Building** or structure on the lot.

“**Yard, Interior Side**” means a **Yard** other than an **Exterior Side Yard**, extending from the **Front Yard** to the **Rear Yard** between the interior side **Lot Line** and the nearest wall of the principal **Building** or structure on the lot.

“**Yard, Rear**” means a **Yard** extending across the full width of a lot between the rear **Lot Line** and the nearest wall of the principal **Building** or structure on the lot.

“**Zoning By-law**” means the **Zoning By-law** of the **Town** passed under the Planning Act, R.S.O. 1990 as amended, from time to time.

## 2.0 Administration and Exemption

### 2.1 Interpretation:

- (a) A word interpreted in the singular number has a corresponding meaning when used in the plural.
- (b) The imperial measurements included in this by-law are for information only and are intended to be an approximate conversion of the metric measurements, which shall prevail in the event of any conflict.

2.2 This By-law shall be administered by the **Director**.

2.3 This By-law shall not apply to any **Fence, Division Fence** or **Privacy Screen** erected for government or other public purposes by the **Town**, the Regional Municipality of York, or any Provincial or Federal governmental authority.

2.4 Where a property is subject to a site plan agreement under Section 41 of the Planning Act, R.S.O., 1990, any **Fences** shall comply with the site plan agreement.

2.5 Where a **Fence** has been installed pursuant to a subdivision agreement under Section 51 of the Planning Act, R.S.O., 1990, any **Fences** shall comply with the subdivision agreement.

## 3.0 General Provisions

3.1 No **Person** shall erect a **Fence** or **Privacy Screen** or **Division Fence** or cause a **Fence, Privacy Screen** or **Division Fence** to be erected,

- (a) which is wholly or partly constructed of barbed wire, chicken wire or other barbed or sharp material
- (b) which is wholly or partly constructed from sheet metal or corrugated metal panels manufactured chipboard, waferboard, plywood or similar manufactured wood products.
- (c) which contains a device for projecting an electric current.

3.2 No **Person** shall construct a **Fence** over a drainage easement or watercourse without constructing a **Water Gate** sufficient to ensure adequate drainage.

- 3.3 All **Water Gates** on **Fences** shall at all times be kept free from obstruction by the **Owner** of such **Fence**.
- 3.4 Notwithstanding any other provision of this By-law, no **Person** shall construct a **Fence**, **Division Fence** or **Privacy Screen** so as to obstruct access to any hydro or water meter or meter reading device by any employee, officer or agent of Newmarket-Tay Hydro or the **Town**.
- 3.5 No **Person** shall construct a **Fence**, **Privacy Screen** or **Division Fence** that is greater than 20 centimetres (8 inches) wide.
- 3.6 Every **Fence**, **Privacy Screen** and **Division Fence** shall be constructed and maintained by its **Owner** in a structurally sound condition and in good repair. For the purpose of this subsection, maintenance of a **Fence**, **Privacy Screen** or **Division Fence** with a surface that has been previously painted, stained, varnished or which has been treated with other similar protective finishes shall be maintained so that such finish does not visibly deteriorate.
- 3.7 The **Owner** of any **Fence** or **Division Fence** or the agent or employee of such **Owner** is permitted to enter upon the land adjoining the **Fence** after having given at least 24 hours written notice of intention to enter to the adjoining property **Owner** or tenant for the purpose of making necessary and appropriate repairs, alterations or improvements to such **Fence** but only to the extent necessary to effect such repairs, alterations or improvements and provided that the adjoining land shall be left in the same condition it was prior to such entry.
- 3.8 A **Hedge** in any **Yard** shall not be in excess of the **Height** limits contained within this By-law except for the provision for width set out in section 3.5 of this By-law
- 3.9 In the case of a **Corner Lot**, no **Person** shall erect a **Fence** or cause a **Fence** to be erected within a **Daylighting Triangle** formed by measuring five metres (5 m) along the **Lot Lines** from the intersection of any two highways or at the intersection of two parts of the same highway meeting at an angle of not more than one hundred and thirty-five (135) degrees.
- 3.10 In the case of any lot, no **Person** shall erect a **Fence** or cause a **Fence** to be erected within a **Daylighting Triangle** formed by measuring five metres (5 m) along the **Lot Line** and a driveway, at the intersection of the driveway and the **Lot Line** abutting the highway.
- 3.11 The area within the **Daylighting Triangle** shall be determined by measuring from the point of intersection of two **Street Lines** or the extension of such lines on a corner lot.
- 4.0 Fences in Residential Zones**
- 4.1 No **Person** in a residential zone shall erect or construct a **Fence** or **Division Fence** in the **Town** in excess of the following **Height** requirements;
- (a) **Rear Yard**: No **Fence** erected in a **Rear Yard** shall exceed 2.1 metres (7 feet) in **Height** provided that in the case of a **Corner Lot**, where a **Rear Yard** abuts a **Front Yard** or **Interior Side Yard** of an adjacent lot, no **Person** shall construct a **Fence**, **Division Fence** or **Privacy Screen** that exceeds 1.8 metres (6 feet) in **Height**.

- (b) **Interior Side Yard:** No **Fence** erected in an **Interior Side Yard** shall exceed 1.8 metres (6 feet) in **Height**.
- (c) **Front Yard:** No **Fence** erected in a **Front Yard** shall exceed 1 metre (3 feet) in **Height**.
- (d) **Exterior Side Yard:** No **Fence** erected in an **Exterior Side Yard** shall exceed 1.8 metres (6 feet) in **Height**.
- (e) Notwithstanding clauses 4.1(a) to (d), a **Fence** abutting an arterial road designated in the Town's Official Plan may have a **Fence** that does not exceed 2.4 metres (8 feet) in **Height** along a rear **Lot Line** abutting said arterial road.
- (f) Where the **Rear** or **Side Yard** of any lot abuts the **Side** or **Rear Yard** of any of any other lot, any **Fence** to be erected shall not exceed the requirement of any **Fence** that may be erected on any such abutting lot, that is to say the more restrictive provisions of this by-law shall apply except in those situations set out in clauses 4(a) and 4(d) above.
- (g) Notwithstanding section 4 of this by-law and the definitions of **Yards**, where the principal entrance of a **Residential Property** is located in an **Exterior Side Yard**:
  - i. The **Exterior Side Yard** shall be deemed to be the **Front Yard**.
  - ii. The **Front Yard** shall be deemed to be the **Exterior Side Yard**.

## 5.0 Privacy Screens in Residential Zones

### 5.1 Every **Privacy Screen** shall be:

- (a) located within **Interior Side**, **Exterior Side** or **Rear Yards** only;
- (b) **Privacy Screens** located in a **Front Yard** maybe erected between adjacent independent entrances of semi-detached, townhouse and link dwellings providing that;
  - i. the **Privacy Screen** shall not encroach more than 1.2 metres (4 feet) from the wall containing the adjacent independent entrances; and
  - ii. shall not exceed 1.8 metres (6 feet) in **Height**;
- (c) not closer to a **Lot Line** or a **Street Line** than a **Deck** would be permitted to be located pursuant to the **Zoning By-law**;
- (d) no longer than 12 metres (39 feet) in total length and no individual section of length is longer than 5 metres (16 feet); and
- (e) no more than 3 metres (10 feet) in **Height** if constructed at **Grade** level and no more than 2 metres (6.5 feet) in **Height** if constructed on a **Deck**.

## 6.0 Fences and Privacy Screens in Non-Residential Zones

### 6.1 No **Fence** in any non-residential zone shall be:

- (a) greater than 3 metres (10 feet) in **Height** within the **Interior Side, Exterior Side** or **Rear Yards**; or
- (b) greater than 1.5 metres (5 feet) in **Height** within the **Front Yard**, except where **Accessory Outdoor Storage** is lawfully maintained within the **Front Yard**, in which case the provisions of this By-law relating to **Accessory Outdoor Storage** shall apply.

6.2 In a non-residential zone that permits **Accessory Outdoor Storage** pursuant to the **Zoning By-law**, the area used for **Accessory Outdoor Storage** shall be screened so that the goods, materials, equipment or machinery are not visible from any street or abutting lots. The **Privacy Screening** shall be provided by any combination of **Fences**, walls, berms, landscaping and plantings that are:

- (a) not less than 2 metres (6.5 feet) and a maximum 3 metres (10 feet) in **Height**; and
- (b) constructed of permanent non-transparent materials or vegetation that provides a visual barrier.

## 7.0 **Line Fences Act**

7.1 With the exception of section 20 in the **Line Fences Act**, the **Line Fences Act** shall not apply to any part of the **Town**.

## 8.0 **Power of Entry**

8.1 The **Town** may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) the provisions of this By-law;
- (b) an order issued under this By-law; or
- (c) an order made under section 431 of the **Municipal Act**.

8.2 Where an inspection is conducted by the **Town**, the **Person** conducting the inspection may;

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts;
- (c) require information from any **Person** concerning a matter related to the inspection including their name, address, phone number and identification; and,
- (d) alone or in conjunction with a **Person** possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of inspection.

8.3 The **Town** may undertake an inspection pursuant to an order issued under section 438 or the **Municipal Act**.

8.4 The **Town's** power of entry may be exercised by an employee, officer or agent of the Town or by a member of a police force with jurisdiction, as well by any **Person** under his or her direction.

## 9.0 Order

9.1 When a **Fence** or **Privacy Screen** is erected or altered in contravention of the provisions of this By-law, the **Director** may issue an order to any **Person** who:

- (a) has erected or altered or caused or permitted to be erected or altered, a **Fence** or **Privacy Screen** on property contrary to the provisions required of this By-law; or
- (b) the order shall require the **Fence** or **Privacy Screen** to be brought into compliance with this By-law within a timeframe indicated in the order and shall include reasonable particulars to identify the contravention, the location of the contravention and the date by which the **Fence** must be brought into compliance with the By-law.
- (c) the order shall be served personally on the **Owner**, or to an email address that the **Person** has provided to the **Town** or posted at the address of the **Owner** where the **Fence** was erected or altered, or sent by registered mail to the last known address of the **Owner**, in which case it shall be deemed to have been given on the 5th calendar day after it is mailed.
- (d) if there is evidence that the occupant of the land is not the registered property **Owner**, the order shall be served on both the registered property **Owner** and the occupant of the land.

## 10.0 Remedial Action

10.1 Wherever this By-law, or an order issued under this By-law, directs or requires any matter or thing to be done by any **Person** within a specified time period, in default of it being done by the specified time period, remedial action may be initiated by the **Director**, or a Town designate. The **Town** may recover, from the **Person** directed or required to do the matter or thing, the costs incurred through a legal action or by recovering the costs in the same manner as taxes.

10.2 For the purposes of taking remedial action under Section 10.1 the **Town**, its Staff and/or its agents may enter, at any reasonable time, upon any lands on which a default to carry out a required thing or matter occurred.

## 11.0 Penalty Provision

11.1 Any **Person** who contravenes a provision of this By-law, including an order issued under this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended

11.2 If a **Fence** or **Privacy Screen** has been erected or altered in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be

deemed to be a continuing of **Fence** for each day or part of a day that the contravention remains uncorrected.

- 11.3 If an order has been issued under this By-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing of **Fence** for each day or part of a day that the order is not complied with.
- 11.4 Any **Person** who is guilty of an offence under this By-law shall be subject to the following penalties pursuant to Part III of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended:
- (a) Upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00;
  - (b) Upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$500.00 and the maximum fine shall be \$100,000.00;
  - (c) Upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues; and
  - (d) Upon conviction of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00.
- 11.5 For the purposes of this By-law, "multiple offences" means an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this By-law.
- 11.6 For the purposes of this By-law, an offence is a "second or subsequent offence" if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.
- 11.7 Where an authorized officer or **Municipal Law Enforcement Officer** has reasonable grounds to believe that an offence has been committed by any **Person** or **Owner**, the authorized officer or **Municipal Law Enforcement Officer** may require the name, address and proof of identity of that **Person** or **Owner**, and the **Person** or **Owner** shall supply the required information.

## 12.0 Collection of Unpaid Fines

- 12.1 If any part of a fine for a contravention of this by-law remains unpaid after the fine becomes due and payable under section 66 of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, including any extension of time for payment ordered under that section, The **Director** may give the **Person** against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which shall be not less than twenty one (21) days after the date of the notice;
- 12.2 If the fine remains unpaid after the final date specified in the notice, the fine shall be deemed to be unpaid taxes for the purposes of section 351 of the **Municipal Act**.

## 13.0 Variance

- 13.1 Where a proposed or existing **Fence** or **Privacy Screen** is not in compliance with this By-law, the **Owner** of the lot on which the **Fence**

or **Privacy Screen** is or is proposed to be constructed, or an authorized agent of the **Owner**, may request a variance from any of the applicable provisions of this By-law.

13.2 An application for a variance shall be made on the form prescribed by the **Town** and shall be accompanied by the non-refundable variance application fee in the **Fees and Charges By-law**.

13.3 A request for a variance shall be submitted to the **Director** on the application form prescribed by the **Town** and shall only be deemed to be complete and ready for a review by the **Director** if it includes:

- (a) the name, address and contact information of the applicant;
- (b) the address of the lot relevant to the variance request;
- (c) reference to the specific Section(s) of the By-law from which the variance is sought;
- (d) a detailed description explaining why the applicant requires the variance;
- (e) a description of the **Fence** and/or **Privacy Screen** including the dimensions and the specifications of the construction and installation;
- (f) a survey of the lot identifying the location of the **Fence** and/or **Privacy Screen**;
- (g) a site plan of the lot identifying the location of the **Fence** and/or **Privacy Screen**;
- (h) proof of notification to abutting neighbours by personal service or prepaid first class mail which indicates: (1) specifications of the **Fence**, (2) reasons for the exemption request, and (3) objections must be forwarded to the **Director** of Legislative Services within 10 days
- (i) payment of the non-refundable fee as outlined in the **Fees And Charges By-law**.

13.4 Upon reviewing an application for a variance, the **Director** shall consider:

- (a) whether it is in accordance with the general intent and purpose of the By-law;
- (b) if approved, would the resulting **Fence** or **Privacy Screen** be in keeping with the surrounding area and would there be any negative impact on adjacent residents;
- (c) are there any special circumstances and would strict application of the provisions of this By-law result in unnecessary difficulty or hardship for the applicant; and
- (d) would approval of the variance result in any impacts to the health, safety or welfare of the public.

13.5 The **Director** shall inform the applicant, as well as any abutting neighbours that submitted objections, by way of written notice setting out the grounds for the decision with reasonable particulars, and the right to appeal such decision to the **Appeals Committee**.

13.6 A request for an appeal to the **Appeals Committee** shall be made in

writing to the **Director** setting out the reasons for the appeal within 10 days after service of the written notice, and shall be accompanied by an appeal fee set out in the **Fees and Charges By-law** to the **Town**,

- 13.7 Where no request for an appeal is received in accordance with section 13.6, the decision of the **Director** shall be deemed to be affirmed.
- 13.8 Where a request for an appeal is received, a hearing of the Appeals Committee shall be convened and the applicant shall be provided reasonable written notice thereof. The Appeals Committee may consider any matter in section 13.4.
- 13.9 Where an applicant makes a request for an appeal and fails to appear at the time and place scheduled for the hearing of the appeal, or requests an adjournment on the day of the scheduled hearing, the applicant shall pay to the **Town** an administrative fee of \$100.00, which may be refunded in the discretion of the Committee if the nonattendance was unavoidable or the adjournment is in the public interest, not prejudicial to the expeditious determination of the proceeding or otherwise justified.
- 13.10 A decision of the **Appeal Committee** is final and binding.

#### **14.0 Liability**

- 14.1 In addition to any other party who commits the offence with respect to this By-law, the **Owner** of the premises on which the **Fence** or **Privacy Screen** was erected or altered shall be deemed to commit the offence.

#### **15.0 Severability**

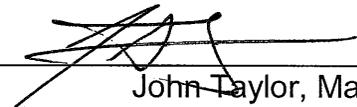
- 15.1 Where a Court of competent jurisdiction declares any section or part of a section of this By-law invalid, the remainder of this By-law shall continue in force unless the Court makes an order to the contrary.

#### **16.0 Short Title**

- 16.1 This By-law shall be referred to as the "Fence By-law";

And that By-law 2000-63, 2000-114, 2000-168, 2001-2, 2002-172 and 1992-91 is hereby repealed.

Enacted this 15<sup>th</sup> day of April, 2019.

  
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John Taylor, Mayor

  
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Lisa Lyons, Town Clerk