

CLITHERALL TOWNSHIP
OTTER TAIL COUNTY, MINNESOTA
Ordinance No. 2022-01

CLITHERALL TOWNSHIP FENCE ORDINANCE

The Board of Supervisors of the Town of Clitherall ordains:

SECTION 1
GENERAL PROVISIONS

Section 1.01. Legislative Findings. The Town Board finds and determines as follows:

- (a) The Minnesota Fence Law, which is contained in Minnesota Statutes, chapter 344, originated from territorial law of the state and has governed the placement and repair of agricultural fences during Minnesota's entire time as a state.
- (b) The Town's supervisors are designated as fence viewers for the purposes of administering the fence law.
- (c) In 2017, the Minnesota Legislature amended the fence law to limit its application to only those situations in which both of the adjoining landowners are using their property to produce or maintain livestock for agricultural or commercial purposes. Previously, the law reflected a shared obligation to build and maintain a partition fence if either owner requested it.
- (d) This limitation in the scope of the fence law is significant and has resulted in some expressing an interest in the Town adopting its own fence law.
- (e) Minnesota Statutes, section 344.20 authorizes the Town to develop and adopt its own fence policy that replaces the state's fence law, provided it follows certain procedures.
- (f) In accordance with the statute, the Town did receive a petition from more than eight landowners requesting a vote on a partition fence policy.
- (g) The Town Board proceeded to develop and adopt this ordinance establishing a partition fence policy for the Town. The statute indicates a local fence ordinance or policy does not go into effect unless it is approved by the electors at an annual or special town meeting.
- (h) The Town Board presented this ordinance to the Town's electors at a reconvened annual town meeting on August 11, 2022, at which the electors in attendance voted to approve this ordinance.
- (i) Based on the Town Board's adoption of this ordinance and its approval by the electors, Minnesota Statutes, section 344.02(a) indicates this ordinance constitutes the fence law

for the Town and that the state's fence law does not apply in the Town.

1.03. Title. This ordinance shall be known, cited, and referred to as the Clitherall Township Fence Ordinance, and referred to herein as the "Ordinance."

1.05. Purpose. This Ordinance constitutes the Town's fence policy and is enacted to promote the health, safety, and general welfare of the inhabitants of the Township by providing a fair and equitable framework for building and maintaining partition fences in a peaceable and equitable manner in order to promote the benefits of shared fencing between agricultural lands. Nothing in this Ordinance relieves owners of livestock from their legal obligation to prevent their animals from running at large onto the properties of others.

1.07. Jurisdiction. This Ordinance shall apply within the jurisdictional boundaries of Clitherall Township, Otter Tail County, Minnesota.

1.09. Amendments. The Town Board may amend this Ordinance as it determines is appropriate and in the best interests of the Town without elector approval. Any such amendments shall be adopted by ordinance.

1.11. Severability. If any section, clause, provision or portion of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. If any court of competent jurisdiction determines the application of any provision of this Ordinance to a particular property or fence is invalid, such judgment shall not affect the application of said provisions to any other property or fence not specifically included in said judgment

1.13. Definitions. The following terms shall have the meaning given them in this section.

Subd. 1. Agricultural Land. "Agricultural land" means land classified by the local or county assessor as meeting the requirements of any of the following:

- (a) Agricultural land under Minnesota Statutes, section 273.13, subdivision 23(class 2a);
- (b) Recreational land under Minnesota Statutes, section 273.13, subdivision 25(d)(12) (class 4c(12)) containing at least 10 acres; or
- (c) Rural vacant land under Minnesota Statutes, section 273.13, subdivision 23 (class 2b); or
- (d) Any parcel containing more than 10 acres regardless of its classification.

Subd. 2. Agricultural Purpose. "Agricultural purpose" means the use of agricultural land for the production of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit of all kinds, vegetables, forage, grains, bees, and apiary products. Wetlands, pasture and woodlands accompanying agricultural land being put to an agricultural purpose shall be considered part of the agricultural purpose.

Subd. 3. Fence Viewers. “Fence viewers” or “viewers” means the supervisors of the Town. At least a quorum of the Town Board serves as the fence viewers to carry out the duties assigned them under this Ordinance.

Subd. 4. Livestock. “Livestock” means beef cattle, dairy cattle, swine, poultry, goats, donkeys, hinnies, mules, farmed Cervidae, Ratitae, bison, sheep, horses, alpacas, and llamas.

Subd. 5. Occupant. “Occupant” means a person who occupies agricultural land under a lease or other interest in the land, but is not the owner of the land.

Subd. 6. Owner. “Owner” means the fee owner of agricultural land and includes a person holding agricultural land under a contract for deed.

Subd. 7. Partition Fence. “Partition fence” or “fence” means any one of the following described types of fences placed on the boundary between agricultural lands.

- (a) Fences consisting of at least 32-inch woven wire and two barbed wires firmly fastened to well-set posts not more than one rod apart, the first barbed wire being above and not more than four inches from the woven wire and the second barbed wire being above and not more than eight inches from the first wire.
- (b) Fences consisting of at least 40-inch woven wire and one barbed wire firmly fastened to well-set posts not more than one rod apart, the barbed wire being above and not more than four inches from the woven wire.
- (c) Fences consisting of woven wire at least 48 inches in height, and one barbed wire not more than four inches above the woven wire firmly fastened to well-set posts not more than one rod apart.
- (d) Fences consisting of at least four barbed wires with at least 40 barbs to the rod, the wires firmly fastened to posts not more than one rod apart, the top wire not more than 48 inches high and the bottom wire 12 to 16 inches from the ground.
- (e) Fences consisting of at least five strands of high-tensile smooth wire, with at least two strands being electric, firmly fastened to posts not more than one rod apart.
- (f) Fences constructed of materials similar to the other fences described in this subdivision that generally serve as agricultural fences and that are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.

Subd. 8. Supervisors. “Supervisors” means the members of the board of supervisors of the Town.

Subd. 9. Town. “Town” means Clitherall Township, Otter Tail County, Minnesota.

Subd. 10. Town Board. “Town Board” means the board of supervisors of Clitherall Township.

SECTION 2 SHARED OBLIGATION

2.01. Shared Obligation to Build.

Subd. 1. Obligation. Owners of agricultural land are required to share equally in building a partition fence on the boundary with other agricultural lands if the following criteria are met:

- (a) Either of the adjoining parcels of agricultural land are used, in whole or in part, for an agricultural purpose; and
- (b) Either owner of the adjoining parcels of agricultural land desire their land to be partly or totally fenced with a partition fence.

Subd. 2. DNR Land. The obligation imposed on the Minnesota Department of Natural Resources under Minnesota Statutes, section 344.03, subdivision 1(b) is adopted by reference, remains in effect, and shall be applied notwithstanding the language of this Ordinance.

Subd. 3. Process to Build. The owner desiring to build a partition fence shall be responsible for working with the adjoining owner to agree on the type of partition fence to be built and the portion of partition fence to be built by each owner. If one of the adjoining parcels of agricultural land is enclosed by a woven wire fence on all sides except the side forming a division line between the other owner’s parcel of agricultural land, each owner shall erect and maintain a fence of similar character as the existing fence along one-half the total length of the division line.

Subd. 4. Dispute. If the owners cannot reach agreement on the need for a partition fence, the type of partition fence to be constructed, or the portion to be built by each, either owner may make a written application to the Town requesting the fence viewers to conduct a viewing and make determinations as provided in this Ordinance.

2.03. Maintenance Obligation.

Subd. 1. Obligation. Owners of agricultural land are required to keep their respective portions of a partition fence properly maintained and in good repair. If the fence viewers have not assigned portions of a partition fence, the owners shall reach agreement on the portions of the fence each is responsible for maintaining.

Subd. 2. Process. If either owner determines the other owner is not properly maintaining the portion of the partition fence for which they are responsible, the owner shall notify the other owner to reach agreement on the necessary maintenance or repair work.

Subd. 3. Dispute. If the owners cannot reach agreement on the required maintenance or repair work, either owner may make a written application for the fence viewers to make determinations as provided in this Ordinance.

2.05. Owners and Occupants. The requirement to build and maintain fences under this Ordinance is a joint and several obligation of the owner and occupants of agricultural land. The actions provided for under this Ordinance to require the construction and maintenance of fences, and to pay costs for failing to do so, may be brought against the owner or occupant individually, or against both. The combined total amount recovered from an owner and occupant shall not exceed the amount allowed under this Ordinance.

SECTION 3 FENCE VIEWING AND DETERMINATIONS

3.01. Application. An owner is required to submit a written application to the Town Clerk to request a viewing and determination from the fence viewers under this Ordinance. Only complete applications will be processed. If an application is incomplete, it will be returned to the owner with a written description of the additional information needed to make it complete. An application must contain all of the following information in order for it to be considered complete:

- (a) The names of the affected owners and their mailing addresses;
- (b) Identify the parcels involved in the dispute;
- (c) Identify the specific boundary lines, or portions thereof, involved in the dispute; and
- (d) Describe the nature of the dispute and the relief the applicant is seeking from the fence viewers.

3.03. Fence Viewer Compensation. An owner who submits an application for a viewing is required to compensation the fence viewers for their services. The Town Board shall establish the rate of compensation for fence viewer services. The Town may invoice the owner for these costs or deduct the costs from the security provided by the owner.

3.05. Security. The Town Board may by resolution require an owner who submits an application requesting the services of the fence viewers to post security in the form of cash or other security acceptable to the Town Board for the total estimated costs before the viewing takes place. The total estimated costs may include compensation of the fence viewers and the cost of professional and other services, hearing costs, administrative costs, recording costs, and other costs and expenses which the Town may incur in connection with the viewing and making a determination. If the Town Board requires security, the fence viewers will not take any action on the application until the security is provided in the form and amount as required in the resolution. The Town will use the security to reimburse itself for all costs it incurs related to the viewing and making a determination. Once the fence viewers complete the viewing and issue their determination, the Town will refund or release, without interest, any remaining balance of

the security to the owner that provided the security once all of its costs are reimbursed. If the amount of security provided is not sufficient to fully reimburse the Town, the Town will invoice the owner who submitted the application for any outstanding amounts. The fence viewers will take no further action on the matter or on a subsequent application until the invoice is paid in full. If the owner fails to pay the invoice, the unpaid amount, including collection costs, constitute an unpaid service charge the Town can collect together with the taxes imposed on the owner's land as provided in Minnesota Statutes, section 366.012.

3.07. Notice. Upon the receipt of a complete application and the required security, the fence viewers shall provide the affected owners at least 10 days written notice of the fence or boundary line to be examined. Notice may be provided by first class mail or by delivering it to the affected owners. The notice must contain a description of the purpose, date, and time of the viewing.

3.09. Viewing. The fence viewers shall conduct a viewing of the fence or boundary line at the assigned date and time, and hear from the affected owners in attendance. The owner who submitted the application shall be responsible for explaining the nature of the dispute and the requested relief. The fence viewers may continue the viewing to a later date or time if it determines additional information is needed to complete the viewing.

3.11. Determinations. The fence viewers shall issue a written determination on an application within 45 days of completing the viewing. The determination may include an order requiring one or more owners to comply with this Ordinance. The order may set out the specific actions required to come into compliance and establish a reasonable timeline for completing the actions. The affected owners, not the fence viewers, are responsible for determining the location of boundary lines. If a boundary line is in dispute, the fence viewers may still make a determination and issue orders as it determines is appropriate under this Ordinance. A determination or order issued by the fence viewers may include, but are not necessarily limited to, one or more of the following.

- (a) Failure to Build. The fence viewers may determine an owner has failed to build, or to properly build, a portion of a partition fence and order the owner to build or rebuild a partition fence.
- (b) Assign Portions. The fence viewers may assign portions of a patrician fence to specific owners and assign responsibility to build or keep maintained the assigned portions of the fence. The affected owner shall be required to record the assignment with the county recorder after which it is binding upon the owners and their successors and assigns. The several owners, and their heirs and assigns forever, shall erect and maintain fences in accordance with the assignment.
- (c) Existing Fence Insufficient. If the fence viewers determine an existing fence is insufficient or a new fence is necessary, they shall notify the delinquent owner in writing to that effect and order that owner to build, repair, or rebuild the fence within a reasonable time.

- (d) Construction of More than Share. If as part of a viewing the fence viewers decide that either owner erected or became the owner of more than that owner's just share of the fence before the present dispute, the other owner shall be required to pay the owner the value of the excess fence constructed as determined by the fence viewers in accordance with this Ordinance.
- (e) Other Matters. The fence viewers may make such other determinations and issue such additional orders as it determines are needed to carry out the purpose and intent of this Ordinance.

3.13. Specific Situations. The specific situations described in this section shall be addressed as provided in this section. All applications, viewings, and orders issued under this section shall comply with and be conducted in accordance with the provisions of this Ordinance.

Subd. 1. Lands Bounded by a Stream. If agricultural lands of different owners must be fenced and are bounded upon or divided by a stream or pond which, in the judgment of the fence viewers, is not in itself a sufficient fence, and if the viewers determine that it is impracticable, without unreasonable expense, for a partition fence to be made on the waters at the true boundary line, and if the owner on either side fails to join with the owner on the other side in making a partition fence on one side or the other, then the fence viewers, on application to the Town by either owner, shall conduct a viewing of the stream or pond and make a determination on which side of the stream or pond the fence must be erected and maintained, or whether partly on one side and partly on the other.

Subd. 2. Lands Occupied in Common. If one of the occupants of enclosed lands belonging to different persons in severalty, which have been occupied by them in common without a partition fence, desires that the part occupied by that person be occupied in severalty, and the other party fails to divide the land or to build a fence on part of the land when it has been divided, the party desiring it may have the land divided and assigned by the fence viewers in the manner provided in this Ordinance.

Subd. 3. Lands First Enclosed. When unenclosed agricultural land is afterwards enclosed, the owner of the land shall pay one-half of the value of each partition fence extending upon the line between that owner's land and the enclosure of any other owner. If the parties do not agree, either party may apply to the Town for a fence viewing. The value must be ascertained by the fence viewers and stated in writing. If an owner fails to pay within 60 days after the value is ascertained and a demand made, the owner of the fence may recover the value and the cost of ascertaining it in a civil action.

Subd. 4. Fence on Town Line. If a partition fence is to be built on a town line, or partly in the Town and partly in outside the Town, as determined by the Town Board, this Ordinance does not apply and all such cases shall be administered and resolved in accordance with Minnesota Statutes, chapter 344.

3.15. Failure to Comply.

Subd. 1. Violation. It is a violation of this Ordinance for an owner to fail to comply with a determination or order of the fence viewers. An aggrieved owner may seek relief for a violation as provided in this Ordinance.

Subd. 2. Compliant Procedure. If an owner fails to comply with a determination or order of the fence viewers, an aggrieved owner may submit a written application to the Town requesting a viewing. The application, viewing, and determination shall be conducted in accordance with the procedures established in this Ordinance. If the fence viewers determine the other owner has failed to comply, the viewers may issue an order authorizing the aggrieved owner to complete the required work and recover their costs against the delinquent owner as provided in this section.

Subd. 3. Value Determination. Once the aggrieved owner has completed the work as provided in the fence viewer’s order, the owner shall submit a new application to request the fence viewers inspect the work to confirm it was properly completed and to determine the value of the work. The application, viewing, and determination shall be conducted in accordance with the procedures established in this Ordinance. The fence viewers shall issue a written determination as to the value of the work done and provide a copy to both the aggrieved owner and the delinquent owner.

Subd. 4. Recovery of Costs. The aggrieved owner that completed the work is entitled to payment from the delinquent owner an amount equal to double the cost of such work as determined by the fence viewers. The aggrieved owner shall be responsible for demanding and collecting the amount from the delinquent owner.

Subd. 5. Civil Action. If the delinquent owner does not pay the amount owed within one month after written demand, the aggrieved owner may recover the amount, with interest, in a civil action.

Section 21. Effective Date. This Ordinance shall take effect upon the first day of publication of an approved summary after adoption.

Adopted this ___ day of _____ 2022.

BY THE TOWN BOARD

Chairperson

Attest: _____
Clerk