



Town of Whitby

By-law # 3657-95

Division Fence By-law

Being a By-law to Provide for the Apportionment of Costs of Division Fences

Whereas, Subsection 210(27) of the Municipal Act, R.S.O. 1990, c.M.45, as amended, provides that by-laws may be passed by the Councils of local Municipalities for determining how the cost of division fences shall be apportioned, and providing that any amount or portion shall be recoverable under the Provincial Offences Act but, until a by-law is passed, the Line Fences Act applies;

And whereas, the Council of the Corporation of Town of Whitby considers it desirable to pass such a by-law to provide for the apportionment of costs of division fences;

Now therefore, the Council of The Corporation of the Town of Whitby enacts as follows:

Definitions

1. In this by-law,
 - (a) “actual cost” means the total cost of the construction, reconstruction or repair of a division fence and includes the value of the materials used and the value of the labour performed to complete the work;
 - (b) “adjoining Owner” includes all persons who are the registered owners or occupants of any lands which abut the parcel of land that is the subject of an application or an action for apportionment of the cost of a division fence pursuant to this by-law or the Provincial Offences Act R.S.O. 1990, c.P.33, as may be amended from time to time;
 - (c) “basic cost” means the cost of constructing, reconstructing or repairing a division fence of any kind and is an amount of money equal to the cost of the construction, reconstruction or repair of a four foot high steel chain link fence which is,
 - (i) not greater than 1 ½ inch diamond mesh;
 - (ii) constructed of galvanized steel wire not less than No.12 gauge or minimum 14 gauge steel wire covered with vinyl forming a total thickness equivalent to No.12 gauge galvanized wire;
 - (iii) supported by at least 1 ½ inch diameter galvanized steel posts encased in a minimum of two inches of concrete above grade to a minimum of two feet below grade, such posts to be spaced not more than ten feet apart; and,

- (iv) provided with top and bottom horizontal rails with a minimum of 1 ¼ inch diameter it being understood that galvanized steel tension rod may be substituted for the bottom horizontal steel rails.
- (d) “division fence” means a fence marking the boundary between adjoining parcels of land;
- (e) “municipality” includes the Regional Municipality of Durham; and,
- (f) “owner” means a registered owner or occupant of land who initiates procedures pursuant to this by-law to install and apportion the costs of a division fence and “owner” includes the person managing or receiving the rent for the land or premises whether on his own account or as agent or trustee for the owner.

Apportionment of Costs of Division Fences

2. This by-law shall apply to all lands within the Town of Whitby, excluding lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by a Municipality or other public authority to separate lands abutting the reserve from the highway, or to lands that are being held by a Municipality or other public authority as an unopened road allowance or for future public highway purposes.
3. The provisions of this by-law shall not apply where the owner of any land has initiated proceedings under the Line Fences Act, R.S.O. 1990, c. L.17, prior to the date of the passing of this by-law.
4. An owner of land may construct and maintain a fence to mark the boundary between his land and adjoining lands.
5. An owner desiring to construct, reconstruct or repair a division fence and intending to require the adjoining owner to share a responsibility for the construction or basic cost of the fence pursuant to this by-law shall serve or cause or to be served upon the adjoining owner, by registered mail, a notice of his or her intention to do so at least fourteen days prior to the commencement of any work or execution of any contract in relation to the work to be undertaken.
6. Where the owners of adjoining land have agreed, in writing, to the construction, reconstruction or repair of a division fence, each owner shall construct, reconstruct or repair fifty percent of the division fence and pay fifty percent of the actual cost of such construction, reconstruction or repair unless otherwise provided for in the written agreement.
7. Unless otherwise agreed, the actual cost for the construction of a division fence shall be paid as follows:

- (a) the adjoining owner shall pay fifty percent of the basic cost or fifty percent of the actual cost, whichever is the lesser, in respect of the division fence in relation to his or her property; and,
 - (b) the owner shall pay the balance of the actual cost.
- 8. Where a declaration has been registered under the Condominium Act, R.S.O. 1990, c. C.26, as may be amended from time to time, the condominium corporation and not the owners of the individual units shall be deemed to be the owner of the land described in the declaration for the purposes of this by-law and,
 - (a) any payment that the condominium corporation may be responsible for under this by-law is a common expense for the purposes of the Condominium Act; and,
 - (b) any payment to be made to the condominium corporation under this Act is an asset of the condominium corporation.
- 9. Any division fence constructed pursuant to the provisions of this by-law shall comply with the provisions of the Fencing By-Law of the Town of Whitby.
- 10. Any division fence constructed or repaired within an area designated as a heritage conservation district pursuant to Part V of the Ontario Heritage Act, R.S.O. 1990, c O.18, as may be amended from time to time, is subject to all the requirements for obtaining a permit pursuant to such legislation.

Enforcement

- 11. Any owner desiring to enforce the provisions of this by-law shall, within ninety days after completion of the construction of the division fence, serve or cause to be served on the adjoining owner a notice by registered mail requiring compliance with this by-law by means of payment of that adjoining owner's portion of the basic cost and if such compliance does not take place within thirty days after service of the notice, the owner may take appropriate proceedings under the Provincial Offences Act, R.S.O. 1990, c. P.33, as may be amended from time to time, to recover the proportionate share of the cost of the work from the adjoining owner.

Short Title

- 12. This by-law may be referred to as the Division Fence By-Law.

Effective Date

13. This by-law shall come into force and take effect upon the passing thereof.

By-law read a first, second and third time and finally passed this 24th day of April 1995.

Original Signed By

Don McKay, Clerk

Original Signed By

Tom Edwards, Mayor